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PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 9th March 1953

S.R.O. 508.—WHEREAS the election of Shri H. Sita Rama Reddi of No. 8/2, Greenways Road, Adyar, Madras, to the House of the People from the Kurnool constituency of that House, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Y. Gadilingana Gowd of Gudikal, Adoni Taluk, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BALLARY

Tuesday, the 24th day of February 1953

PRESENT:

Sri N. D. Krishna Rao, M.A., Bar-at-law, I.C.S.—*Chairmann.*

Sri D. Rangayya, B.A. B.L.—*Member.*

Sri K. P. Sarvothama Rao, B.A. B.L.—*Member.*

ELECTION CASE No. 2 OF 1952

(Election Petition No. 52 of 1952 before the Election Commission, India).

BETWEEN

Y. Gadilingana Gowd—*Petitioner.*

AND

1. H. Sitarama Reddi.
2. M. *Venkatasubbayya* Naidu.
3. Nadimulla Syed.
4. N. Vembu—*Respondents.*

This Election Case coming on for final hearing before us on the 6th day of February 1953, in the presence of Sri K. Nagarajan and Sri K. Chennabasappa, advocates for the petitioner, and of Sri D. Venugopalachari and Sri N. Mrityunjaya Sastri, advocates for the 1st respondent, Sri D. Govindaswami Rao, pleader for the 2nd respondent, the 4th respondent appearing in person, and the 3rd respondent being absent *ex parte* and having stood over till this day for consideration, the Court delivered the following.

JUDGMENT

(The judgment of the Tribunal was delivered by Sri K. P. Sarvothama Rao).

Y. Gadilingana Gowd one of the candidates for election to the House of the People for the Kurnool Constituency has filed this election petition calling in question the election of Sri H. Sita Rama Reddi (1st respondent) and seeking a declaration under Section 98 of the Representation of the People Act 1951 (Act XLIII of 1951) that the election of the 1st respondent is void. Respondents 2 to 4 were the other candidates whose nominations were accepted and whose names were included in the list of the valid nominations. The 1st respondent filed a counter and is appearing by advocate. Respondents 2 and 4 also filed counters but appear in person. The 3rd respondent is *ex parte*.

2. The petitioner and respondents 1 to 4 were the candidates whose names were included in the list of valid nominations published by the Returning Officer on 1st December 1951 for the Kurnool Constituency. The Kurnool Constituency consists of the taluks of Kurnool and Pattikonda in the Kurnool District and the taluks of Adoni, Alur and Siruguppa in the Bellary District. The polling took place on 5th January 1952 and the counting started on 9th January 1952 and ended on 12th January 1952. The petitioner secured 57051 votes and the 1st respondent 70887 and there was a difference of nearly 13236 votes between the petitioner and the 1st respondent. There were 1019 invalid votes, and respondents 2 to 4 forfeited their security deposits. The 1st respondent was declared duly elected and the declaration of the result was published in the *Gazette of India* on 17th January 1952 and this petition was received by the Election Commission on 15th March 1952.

3. The petitioner alleges in his petition that the election of the 1st respondent has not been fair and free and that the election of the 1st respondent has been brought about by the commission of major corrupt practices mentioned in Section 123 of the Representation of the People Act with the connivance of the 1st respondent and his election agents and other agents. He also alleges serious and flagrant violations of and non-compliance with the provisions of the Representation of the People Act 1951 and the mandatory provisions of the rules framed thereunder which have materially affected the result of the election.

4. The 1st respondent in his counter claimed that his election was fair and free and denied that he or his election agents were guilty of any major corrupt practices or of any flagrant violation and non-compliance with any of the provisions and mandatory rules of the Representation of the People Act which would materially affect the election or make it void.

5. On the pleadings the following issues were framed. They indicate the grounds of attack and defence, which will be referred to in detail and dealt with under the issues concerned:—

(1) Whether the corrupt practice of bribery mentioned in para. 7(a) (2) and List No. 1, para. 2 was committed as alleged.

(2) Whether the corrupt practice of bribery mentioned in para. 7(a) (1) and List No. 1, para. 1 was committed by Sri H. Linga Reddi with the connivance of the 1st respondent.

(3) Whether the 1st respondent, his agent or any other person with his connivance or with the connivance of his agent published any statement of fact which is false concerning the personal character or conduct of the petitioner which was reasonably calculated to prejudice the prospects of the petitioner's election.

(4) Whether the 1st respondent or his agent or any other person with the connivance of the 1st respondent or his agent conveyed in any motor vehicles any voters from or to the polling booths in the town of Adoni or Ramadurgam or in both, as detailed in List No. 3.

(5) Whether the 1st respondent procured or obtained the assistance of Sri N. Venkatanarasa Reddi, Revenue Divisional Officer, Y. Pitchi Reddi, Assistant Secretary, Rayalaseema Development Board and Sri H. Linga Reddi, Public Prosecutor for the furtherance of the prospects of the 1st respondent's election.

(6) If any of the issues 1 to 5 are answered in the affirmative whether the 1st respondent is protected by having complied with Section 100(3) of the Act.

(7) Whether the return of election expenses of the 1st respondent is false in any material particular. If so, whether the result of the election has been materially affected.

(8) Whether there was any violation or non-compliance with the provisions of the Act and Rules thereunder by the Returning Officer in the conduct of the election and in particular in the appointment of polling agents and the display of "notices" as required by Rule 19(3) (b). If so whether the result of the election has been thereby materially affected.

(9) Whether Rule 21(5) has been violated and as a result of the election has been thereby materially affected.

(10) Whether there was any tampering of the ballot boxes as mentioned in para. 9(3) (a), (b) and (c). Whether the alleged irregularities complained of in para. 9(4), (5), (6), (7), (8), (9) and (10) are true and if so have they materially affected the result of the election.

(11) To what relief is the petitioner entitled?

(12) What is the extent and nature of costs to be awarded, if any, to either of the parties?

6. Forty six witnesses were examined for the petitioner and Exs. A-1 to A-137 were marked on his behalf. The 1st respondent has examined 20 witnesses and has marked B-1 to B-56 as exhibits. We have been taken through the entire evidence and elaborate arguments were addressed for 5 days.

7. Issues 7 to 10 may be dealt with first. Issue 7 is "Whether the return of election expenses of the 1st respondent is false in any material particular. If so, whether the result of the election has been materially affected". The return Ex. A-39 was filed with the Returning Officer on 29th February, 1952, without the requisite declarations on stamp paper. The date on which the return has to be lodged and the date on which the return has been lodged were entered by the Returning Officer and signed by him on 29th February, 1952. The stamp papers for the declarations of the candidate and of his agent were purchased at Bellary on 28th February, 1952, and the stamp paper for the declaration of the 1st respondent was sent to Madras by Express Delivery Post on the same date. It reached the 1st respondent on the 29th and the declaration was affirmed by him before the Collector and Additional District Magistrate of Chingleput who happened to be living near his house at Madras. Ex. B-22, the telegram was despatched from Madras on 29th February, 1952, by the 1st respondent to R.W. 20, Linga Reddi, his brother-in-law to the effect that the election papers had been sent through R.W. 19, Ananthachar, an M.L.A. at that time and that he should meet Ananthachar at Bellary Railway Station on the 1st of March and receive them. The telegram was received at Bellary on the same day, and the evidence of R.W. 19, against whom nothing was suggested shows that he delivered the cover handed over to him to R.W. 18, the election agent who met him at the Railway Station. R.W. 18, states that he received the cover containing the declaration Ex. A-37. R.W. 18 had affirmed his declaration before Special First Class Magistrate, Bellary on 29th February, 1952, and the declarations of both, Exs. A-36 and A-37 were filed before the Returning Officer on 1st March, 1952. They were examined on 1st March, 1952, and according to the Returning Officer, R.W. 6, they had been lodged in the manner required by the Rules. The evidence of the Returning Officer R.W. 6, is that the requisite notice Ex. B-23 was put up on the notice board on 1st March, 1952, and Ex. B-24 similar to Ex. B-23 was sent to the Election Commission, Delhi. The date by which the return ought to have been lodged was on 1st March, 1952, and there is no reason to doubt as stated by R.W. 6, that it was lodged in the manner required on 1st March, 1952. The petitioner has no personal knowledge of these facts and his assertion that it was not filed on 29th February, 1952, is unfounded. Further, there was time till 1st March, 1952, to lodge the return and on the evidence, it cannot be doubted that the return was filed as required within the time. The return is therefore not false with regard to the date on which it was filed.

8. As pointed out by R.W. 18, the expenses incurred by the 1st respondent in conducting the election campaign from the date of his adoption as a Congress Candidate to the date when he filed his nomination papers are included in the receipts dated 1st November, 1951, and 4th November, 1951, in Part-D of Ex. A-39 and the allegation that the return is false in this respect cannot also be accepted. With regard to the wages paid to the drivers of the vehicles, a sum of Rs. 100/- is shown in the return and there is no evidence that any other payment was made.

The other grounds of attack under sub-paras. 3, 5 and 6 of the petition have not been pressed at the time of arguments nor was evidence adduced about them. The first part of this issue is answered in the negative and the second part does not arise for decision.

9. Issue 8 relates to the violation of or non-compliance with the provisions of the Representation of the People Act and the Rules framed thereunder. The petitioner's case is that in the matter of polling agents due care was not exercised by the Returning Officer and unauthorized persons were allowed to function at booths particularly on behalf of the 1st respondent in contravention of Section 46 of the Act and Rule 12(2) and (3) and Rule 19(3) (b). P.W. 35, states that in Chintakunta polling station he found three unauthorized persons inside the station compound calling themselves polling agents of the 1st respondent. The rules allow one polling agent for each candidate and the presiding officer who was a young boy could not give a satisfactory explanation about it. Ex. A-94 the letter of appointment of one of the agents of the 1st respondent was produced to show that there were many blanks in it. But that by itself would not affect the result of the election, and there is also evidence that relief polling agents could be appointed. The presiding officers were drawn from all departments,—educational, agricultural, judicial etc.—and P.W. 34, says he is unable to state how many were drafted from the Revenue Department and how many from other departments. It was next alleged that the notices of the names of the candidates displayed outside and inside the polling stations were not in English nor in the same order as in the published list of nominations are required in Rule 19(3) (b). P.Ws. 34 and 35 speak to this irregularity. The evidence of the Returning Officer shows that there was a discrepancy between the list of valid nominations and the names noted on the posters outside the polling booth in the taluks of Alur, Siruguppa and Adoni, but the discrepancy was with regard to the names of the 4th respondent and the 2nd respondent and not of the petitioner and the 1st respondent. Further it is not shown how the discrepancy with regard to the 4th respondent and the 2nd respondent has materially affected the result of the election. The issue is found in the negative.

10. Issues 9 and 10 deal with the alleged tampering and violation of Rule 21(5) and the irregularities referred to in paras. 9(3) (a), (b) and (c) and 9(4) to (10) of the petition. P.Ws. 13, 34 and 35 state that when the boxes were taken up for counting the paper seals were found defective and so affixed that boxes could be opened without the seals suffering any injury. Out of a total number of 2825 boxes for the five candidates about 400 (of which 100 belonged to the 1st respondent) were found in this condition, which they say, indicate that the boxes were tampered with. It is also alleged that the boxes in the polling compartments were not kept in the order of the names in the list of valid nominations and that the counting was unnecessarily delayed. It is further alleged that the number of polling booths notified was 563 but actually there have been 565 booths and two booths had been added to the Adoni Polling Station No. 91. R.W. 6, the Returning Officer denies that there was any delay in fixing the counting date and says that the polling stations have been 565 from the beginning and no polling booths were added to No. 91 as is evident from Ex. B-37 filed by him. R.W. 6 says that there was some mistake in printing the names in the Telugu lists and the names of the 4th respondent and the 2nd respondent were thereby interchanged. As regards tampering, R.W. 6 denies any tampering of the boxes and states on 9th January, 1952, when the counting began the candidates present inspected the boxes and no complaint was made to him by anybody on that date that the boxes had been tampered with. The 4th respondent gave him an application Ex. B-25 on 10th January, 1952, alleging that on 9th January, 1952, the petitioner had pointed out some boxes showing signs of having been tampered with and that R.W. 6 had admitted on 9th January, 1952, about the serious lapse and violation or rules. R.W. 6 immediately passed orders on the petition itself stating that nothing was pointed about tampering on 9th January, 1952, and the alleged admission said to have been made by him on the 9th was a lie. According to R.W. 6 the Paper seals of the boxes might have fallen due to mechanical defects in the boxes or to their not being properly affixed by the presiding officer or to jolting when in transit to the place of counting. The boxes were all under police-guard at the counting centre and R.W. 6 had no suspicion whatever that any of boxes were tampered with. He also says that in the Bellary Constituency in many of the boxes the paper seals were found uncut inside the boxes. We are satisfied on the evidence in this case that there was no tampering of the boxes and nothing could be alleged against the presiding officers who according to the evidence were drawn from all departments including Revenue. There is no substance whatever in the objection that the polling agents were not allowed to fix their own seals on the packets of unused ballot papers as Rule 32 does not provide for it.

11. The total numbers of ballot papers entered under head No. 6 of Form 10 under Rule 33 as received from the several polling stations do not tally with the total of ballot papers found in the several boxes at the time of counting. And this is urged as pointing to tampering of the boxes. Exs. A-129 and A-130 are relied on as pointing to these discrepancies. There is no direct evidence of tampering and the mere fact that the totals do not tally cannot point to a conclusion that the boxes must have been tampered. In Ex. A-130, a reason has been assigned for this discrepancy and it is as follows:

> "In most of the cases where the ballot papers are found short, the reason for such shortage may be due to the fact that illiterate voters might have carried away with them the ballot papers issued to them not knowing as to how they should record their votes in the polling compartment".

Ex. A-130 records reasons for the number of increased ballot papers found in some of the cases. But in some cases they however state that the reasons for discrepancy are not known.

12. We are not prepared to hold in view of the evidence of R.W. 6, that the boxes have been tampered with or the result of the election has been materially affected. We find these issues against the petitioner.

13. It will be convenient now to take up issue No. 4 which relates to the 1st respondent and his agent or other person with the connivance of the 1st respondent or his agent conveying voters from or to the polling booths in the town of Adoni, Ramadurgam or in both as detailed in the list No. 3. List No. 3 mentions about 19 vehicles as having carried voters to and from the polling booths in Adoni. Apart from the general allegations of carrying voters in these vehicles, with regard to vehicles Osmanabad-54 and MDB 1238 and MSZ 6075, specific allegations have been made in the petition. P.W. 14, one Ahmed Sahib, is one of the witnesses examined in this connection. He is a highway contractor at Adoni. He says he worked for the 1st respondent in the last election and canvassed votes for the 1st respondent. He further states that on the polling day he took voters in a motor van to the polling booths, both from the Congress Office and from the houses of the voters. He also states that his name was removed from the list of highway contractors and that he approached the 1st respondent one or two months before the election at Adoni Railway Station and that he was unemployed for the last four years. He worked because Thimmayya Chetty asked him to work. He also states that he spent Rs. 15/- from his pocket for giving coffee etc., to the voters. He says he does not know the name of the driver nor the van. He states that he had not seen the van either before or after the election day. He also states that he does not know the voters. He further states that the 4th respondent met him in Kumbarageri on the date of the election and stopped the van and objected to his transporting voters. The 4th respondent is also said to have taken a photograph and brought a Police Officer who told him that this should not be done. P.W. 35, states that he saw a large number of motor vehicles moving in all the streets full of people driven towards the polling station. Those vehicles stopped in front of the polling station and he saw people get out of them and take their own places in queues in front of the polling station. All these vehicles bore the Congress symbol. Some of the numbers of the vehicles were taken down by him and some of the numbers were given to him by his agents, who noted the numbers. He says he saw particularly two vehicles. One was Osmanabad 54 in front of polling station 92 at about 9 A.M. It came late laden with women voters and stopped in front of polling station No. 92 and P.W. 14. was in it seated next to the driver. The driver gave his name as Khaja Hussain of Bellary and he challenged the driver as to why he was driving it without the number plate and he produced Ex. A-75 the notes that he made. He sent a man to bring a Police Officer and P.W. 31, the Assistant Superintendent of Police came in about 10 minutes time, but the voters who were in the van had alighted and merged themselves in the crowd. P.W. 31, questioned the driver who said that the number plate had fallen down and that he had removed it and kept it inside the van and produced it. It will be noticed in passing that P.W. 35 though he noted the name of the driver and got his signature did not try to get the names or the signatures of the voters who were alleged to be inside the van. P.W. 35. also states that he told the 1st respondent that his voters were being carried in lorries and vans and that he should stop it but the 1st respondent did not give him any reply and went away. The 1st respondent as R.W. 5 admits the meeting of the 4th respondent but denies that the 4th respondent ever told him about the voters being carried in vans. P.W. 35. has also produced a copy of his wire Ex. A-76 to the Election Commissioner, Delhi, complaining about the carrying

of voters in vehicles. P.W. 31, states that he went round supervising the bandobust arrangements in Adoni town and that he met the 4th respondent at one of the polling booths in Adoni and he was told by him that some persons were being carried to the polling booths near Kokarjanda in a van. P.W. 31, advised him that it being a non-cognizable offence he should complain to the presiding officer. In spite of this advice, the 4th respondent did not complain to the presiding officer or to anybody but instead sent a wire, Ex. A-76, in the evening after the polling was over. If he had at least complained to the presiding officer as advised by P.W. 31, the matter could have been placed beyond all doubt. P.W. 31, admits that Khaja Hussain showed him the number plate from inside the van. He also states that there were no persons inside the van and that it was 6 or 7 yards away from the polling booth. P.W. 35, is obviously an interested witness.

14. The petitioner as P.W. 34, states that in Adoni he noticed many vans and lorries with Congress symbols carrying voters to the polling booth and that he got the list for some of the vehicles from the 4th respondent and some from his workers. Though P.W. 35, noted Khaja Hussain's name and also obtained his signature he did not care to note his address so that he could be summoned and his evidence taken about this fact. He has not been examined though he is said to be a person of Bellary.

15. The next van said to have been used for conveying voters is MSZ 6075. P.W. 34, states that he saw the van at 11 A.M. at Adoni on 5th January, 1952, carrying voters and that he went to the Police Station with a view to make a report. The Sub-Inspector was not at the station and so he gave a complaint in writing to the sentry and asked him to hand it over to the Sub-Inspector. He does not know the name of the sentry and he also states that he did not report to the polling officer. He states that he took steps for the production of the complaint but it could not be traced. P.W. 35, states that MSZ 6075 was also carrying voters and one Venkobanna was driving it and that every time he tried to stop it, the driver dodged and evaded him. He states that he caught him at about 10 A.M. before polling station No. 92. P.W. 35, further says he knew Venkobanna for seven years past and that he belongs to Adoni. He has not however taken his signature nor complained to P.W. 31, specifically about him. P.W. 35, also states that within a month after the election, Venkobanna brought the "C" certificate and showed it to him and he took two photographs, one of the certificate, and the other of Venkobanna with the certificate in his hand. They are Exs. A-77 and A-78. Exs. A-79 and A-80 two photostat copies of two bills for petrol supplied by P.W. 37, for MSZ 6075 to T.G. Thimmayya signed by Venkobanna are also produced. We find from the evidence of P.W. 38. that the amounts of these bills find a place in the ledger page of Thimmayya. The evidence of R.W. 8, shows that this vehicle was lent to Thimmayya, on the evening of 5th January, 1952. It may be that Thimmayya purchased the petrol then for that vehicle. P.W. 35, admits that these bills were given to him by Thimmayya. It is not improbable that the signature of Venkobanna might have got subsequently by P.W. 35. R.W. 18, states that MSZ 6075 was at Harivanam village on the day of polling. R.W. 7, has been examined and he says that he was employed by R.W. 18, ten days before the election and that on the day of polling in the morning he took the van to Harivanam and that the van stayed at Harivanam the whole day and he returned only on the evening at 6 P.M. It is also in evidence that the "C" certificate of this van was missing and R.W. 3, the purchaser of this van has been examined and he has produced Ex. B-20, a duplicate "C" certificate. There is therefore no substance whatever in the charges made under this issue. As regards the other vehicles mentioned, the petitioner has given them up during the course of the argument and there is also no evidence about them. On the whole, we are not satisfied with the evidence let in on the side of the petitioner on this issue and we find that the 1st respondent or his agent or any other person with the connivance of the 1st respondent or his agent did not convey in any motor vehicles any voters from or to the polling booths in the town of Adoni or of Ramadurgam or any booth as detailed in list No. 3.

16. *Issue No.* 1.—This relates to the corrupt practice of bribery or the offering of illegal gratification for the purpose of procuring votes or support for the 1st respondent's election contrary to the provisions of Section 123(1) of the Representation of the People Act, 1951. It is stated that the 1st respondent himself used his official influence as Minister of the Madras State to procure administrative sanction for the diversion of a sum of Rs. 15,000 out of the Panchayat funds of Pattikonda in consideration of the voters of Pattikonda voting in favour of the 1st respondent. It is admitted that there was no protected water supply for the said town Pattikonda which is part of the Constituency for the House of the

People's seat and that the latest proposal of the Government in or about October 1951 was that out of the total cost of the scheme, the inhabitants of Pattikonda had to raise a sum of Rs. 25,000 by public subscription, the balance of the estimated cost being shared between the Panchayat Board, the District Board of Kurnool and the Madras Government. The subscription received from the people was about Rs. 7,000. It is alleged that one Tommandra Venkataramayya, P.W. 4, in the case, an influential citizen of the place, and President of the Town Congress Committee met one Chinna Reddi, a relative of the 1st respondent, on 19th October 1951 at Dudekonda and informed him that if the 1st respondent desired to have the votes of the Pattikonda town, he should make arrangements to absolve the public from the liability to make the contribution proposed by the Government. Chinna Reddi promised to meet the 1st respondent at Madras on the 21st October 1951 and to discuss the matter with the 1st respondent and to let P.W. 4 know about the discussion. A few days later, Chinna Reddi met P.W. 4 and told him that the 1st respondent was agreeable and that the details would be discussed personally by H. Basavanna Gowd, the father-in-law of the 1st respondent. Basavanna Gowd is alleged to have met P.W. 4 on or about the 2nd of November 1951 in the shop of Jayarama Reddi and communicated to P.W. 4 that the 1st respondent was agreeable to influence and got administrative sanction for the Panchayat Board of Pattikonda paying Rs. 15,000 out of Rs. 25,000 originally reserved to be raised by public subscription. Basavanna Gowd also authorised P.W. 4 to announce this, to the inhabitants of the town and canvass whole-hearted support since their desire had been fulfilled. It is further alleged that in the course of a tour by the 1st respondent ostensibly as an official tour between 5th November and 11th November 1951, the 1st respondent visited Pattikonda town on 9th November 1951 and at a public meeting held in the afternoon at Munroe Tope the 1st respondent announced that administrative sanction would be accorded to the debiting of Rs. 15,000 to the Panchayat Board and they could look forward to the early completion of the water supply scheme. The promise of the 1st respondent was kept up and the administrative sanction was accorded and the intimation thereof was received in Pattikonda before the polling day. This is said to have been fully utilized by the 1st respondent in canvassing votes for himself.

17. P.Ws. 4, 5, 6 and 30 are the witnesses who give evidence relating to these facts. They also speak to the meeting of the elders of the village held in the reading room where Chinna Reddi stated that the Panchayat Board should get the resolution passed for the approval of the scheme by the higher authorities without further payment by the people and that the same would be got sanctioned by the 1st respondent if they voted for him; and that almost all the people agreed to this proposal to give votes to the 1st respondent, because of the difficulty of the water supply to the town. The petitioner has also filed Ex. A-46, the welcome address presented by the President of the Panchayat Board, Pattikonda to the 1st respondent at the meeting held at Munroe Tope on 9th November 1951. The address requests the Government either to contribute the said sum of Rs. 15,000 or to allow the Panchayat Board to contribute the said sum of Rs. 15,000 and the rest of Rs. 10,000 would be contributed by the people, and pressed for sanction of the scheme. It may be noted that two addresses were presented to the 1st respondent on 9th November 1951, one—by the Town Congress Committee, and another—by the Panchayat Board Exs. A-106 and B-2. The execution of water supply scheme was stressed in both these addresses and the 1st respondent said that he would do his best to help them. On his return to Madras, the 1st respondent forwarded these addresses to the department concerned for early action. In the meantime, Pattikonda Panchayat Board passed a resolution Ex. A-68 offering to contribute Rs. 15,000 from their funds and seeking administrative sanction for the scheme and sent it to the Inspector of Local Board with a covering letter Ex. A-57, dated 20th November 1951. The 1st respondent seems to have done nothing except forwarding the addresses to the department concerned till 7th December 1951. On 7th December 1951, the 1st respondent received Ex. A-61 enclosing the resolution of the Panchayat Board. The 1st respondent telephoned to P.W. 46 who was then the Inspector of Municipal Council and Local Boards, but his Personal Assistant P.W. 45 received the telephone message. Ex. A-112, the gist of the telephone conversation reduced to writing by P.W. 45 has been filed. After referring to the contributions to the water scheme Ex. A-112 runs thus:

> "It appears a petition was sent some time ago and it is pending in the Inspector's Office. H.M. (meaning 1st respondent) said that he will be glad if the permission can be granted immediately and orders passed to that effect to-day or to-morrow. If the permission is to be sanctioned by Government it may be sent urgently when he could speak to Sivanandam."

It is also noted in Ex. A-112 that P.W. 46 was in the Secretariat and happened to meet the 1st respondent in his room. As stated by the 1st respondent, he had

a talk with P.W. 46 who gave him to understand that representation had already been made to Government and was trying to expedite the same.

18. Ex. A-113 is the endorsement made by P.W. 46, which says "Met him, put up papers urgently". Ex. A-63 the order sanctioning the diversion was passed on the same date, and communicated to the Panchayat Board.

19. The petitioner strenuously argues from this that the extraordinary interest taken by the 1st respondent as is evidenced from the telephonic message and talk with P.W. 46 would prove his case of bribery. He also wanted to summon the note file from the Health Department of the Secretariat, which according to him would show the part and interest of the 1st respondent in getting the sanction for the scheme. The Government as well as P.W. 46, the Inspector of Local Boards claimed privilege and refused to disclose the note file and by our order, dated 11th December 1952, we upheld the privilege as regards the note files. There is therefore nothing to show that the 1st respondent went out of the way to get this scheme sanctioned. Chinna Reddi R.W. 14 denies that he is a relation of the 1st respondent also denies the several allegations and the meetings in the reading room spoken to by P.Ws. 4, 5, 6 and 30. Muthyala Chetty the President of the Panchayat Board R.W. 15 denies that the resolution was passed on the condition that the 1st respondent should sanction the scheme and the voters of Pattikonda to vote for him. R.W. 1 who presided at the meeting states that the 1st respondent merely replied to the addresses stating that he would do his best. P.W. 46 the Inspector of Local Boards states that independent of the Revenue Minister's phone message, he would have passed the same order and that he was not influenced by it. According to him, the diversion of Panchayat funds is solely within his competence. What was done by the 1st respondent could have been only in the discharge of his public duties. It might be that he took a keen interest in it because the citizens of Pattikonda were in dire need of water and therefore he wanted to do something in the matter. It is not suggested that the 1st respondent is a direct party to the agreement spoken to by the witnesses on the side of the petitioner. On the evidence, we are not satisfied that what the 1st respondent did in the matter of Water Supply of Pattikonda was done with the corrupt motive of getting the votes of the people of that place. We therefore hold on this issue that the 1st respondent has not committed the corrupt practice of bribery mentioned in para 7(a) (2) of list No. 1 para 2. We find this issue in favour of the 1st respondent.

20. *Issue No.* 5.—This issue is "Whether the 1st respondent procured or obtained the assistance of Sri N. Venkatanarasa Reddi, Revenue Divisional Officer, Y. Pitchi Reddi, Assistant Secretary, Rayalascema Development Board and Sri H. Linga Reddi, Public Prosecutor for the furtherance of the prospects of the 1st respondent's election". The evidence so far as it relates to Venkatanarasa Reddi and Pitchi Reddi in the case is that they accompanied the 1st respondent throughout his tour in Kurnool and the villages of Yemmiganur, Holagondi, Harivanam, Gudikal and Pattikonda and were present when the 1st respondent addressed the meetings in all these places. P.W. 2 speaks to the public meeting held in the Municipal High School at Kurnool. P.Ws. 7 and 8 speaks to the meeting at Yemmiganur; P.Ws. 10, 11 and 12 to the meeting at Harivanam; P.W. 19 to the meeting at Gudikal; and P.Ws. 4, 5, 6 and 30 to the meeting at Pattikonda. There is also some controversy as to whether the 1st respondent actually canvassed votes and support for himself at these meetings. The 1st respondent denies the charge and according to him at everyone of those meetings he spoke how the Government for the last five years had worked and asked for general support for the Congress. R.Ws. 1, 2 and 9 corroborate him and R.W. 12 a resident of Harivanam says that the 1st respondent did not speak or canvass votes. R.W. 15 also supports him about the meeting at Pattikonda.

21. So far as Linga Reddi is concerned we have the evidence of P.W. 22 belonging to Siruguppa, who says Linga Reddi came to his village and canvassed votes. P.W. 22 admits that he is a staunch Lingayat and worked for the petitioner on communal lines. His evidence is therefore not of much value. P.W. 26 merely sees Linga Reddi going in a car and salutes him. P.W. 27 a Sub-Inspector of Police, and P.W. 39, Police Constable 793 speak of an incident that happened on the polling day in the course of which Linga Reddi the Public Prosecutor told the constable that he would be dismissed. But as against this, we have the judgment Ex. B-16 itself, so far this incident is concerned. The Police Constable filed a complaint and the same was thrown out, *vide* Ex. B-16. We have also the evidence of R.W. 4, who states that Linga Reddi did not make any remarks. Linga Reddi as R.W. 20 denies canvassing or working for the 1st respondent, but he admits that on the polling day, he went round the polling booths in order to see how the new adult Franchise worked.

22. Admittedly the 1st respondent was the Revenue Minister when he toured the Constituency in November and addressed the meetings. Officers would have been accompanying him in the usual course. Some points has been made on the other side that when he toured in November as on an official tour, he did not draw his T.A. while in December for his election tour he drew his T.A. But this consideration of T.A. according to us is not germane to the issue. There is no evidence that the 1st respondent procured or obtained the assistance of these officers. Further, Linga Reddi was his own brother-in-law, and there was no question of procuring him for the election Much has been made about the retransfer of Venkatanarasa Reddi to Bellary. The allegation is that the Revenue Minister got Venkatanarasa Reddi transferred to Bellary so that he could work and canvass for him. The 1st respondent says that while he was in tour at Bellary from 5th to 8th August 1951, R.W. 6 the District Collector was the first official to meet him and represent to him that he would like an experience official familiar with the conditions of Bellary District to be posted to Bellary and suggested the name of Venkatanarasa Reddi who had been transferred on 7th July 1951 to Hospet. The 1st respondent says that he returned to Madras, and wanted the Board of Revenue to bear the request of the Collector in mind when the next chain of transfers take place. It is in evidence that the Collector R.W. 6 wrote to the Board on 10th August 1951. R.W. 6 also states that he wrote the letter on his own initiative, and Ex. A-110 refers to the letter of the Collector as well as the recommendation of the Minister. Even granting for the sake of argument that the 1st respondent really transferred Venkatanarasa Reddi to Bellary, we have no evidence on the side of the petitioner showing that Venkatanarasa Reddi canvassed votes for the 1st respondent at Bellary.

23. There is no allegation or evidence in this case that these officials have interfered with the freedom of the voters to exercise their votes. The evidence in the case only points to the presence of these officials at the meetings addressed by the 1st respondent, and there is nothing unusual about their being present. After all, they too are voters and citizens and their presence at the meeting does not justify the inference that there was official interference with the election. As the evidence stands, we are not prepared to hold on this issue that the 1st respondent procured or obtained the assistance of Venkatanarasa Reddi, Pitchi Reddi and Linga Reddi for the furtherance of the prospects of the 1st respondent's election.

24. *Issue No.* 2.—This relates to the corrupt practice of bribery alleged to have been committed by one H. Linga Reddi, a relation of the 1st respondent. It is alleged that Linga Reddi who was and is the Public Prosecutor of Bellary actively canvassed votes on behalf of the 1st respondent and agreed with the connivance of the 1st respondent or his agent not to oppose an application for bail filed by two persons, Ayyappa Reddi and Chinna Reddi before the Sessions Judge of Bellary in consideration of these accused and their relatives canvassing votes for the 1st respondent as well as voting for him. One Ramalinga Reddi, a rich landlord of Haligeri was murdered on the 21st of August 1951 at about 5 P.M. The Police filed a complaint and arrested Ayyappa Reddi and Chinna Reddi. The accused were on remand and detention after their arrest. They filed two applications. Exs. A-42 and A-43 before the Sessions Judge of Bellary on 14th November 1951. The case was pending before the Stationary Sub-Magistrate of Alur as P.R.C. No. 18 of 1951. Notice was given to the Public Prosecutor on the 14th and the applications came on for hearing before the Judge on 19th November 1951. The following order was passed:

> "The case is one of murder in open daylight; and there is an eye-witness who has given evidence that the accused are the persons that committed the murder. I am not impressed by the contention that the defence will suffer merely because the accused are in jail. The petition is dismissed."

These bail applications were moved by Sri S. Tirumala Rao, P.W. 28 who states that the Public Prosecutor opposed this application vehemently and that an uncle of the accused came to him for instructing him in the bail application and that before the bail application was filed, seven prosecution witnesses including the only eye-witness had been examined in the committing Court. P.W. 43 the Sub-Inspector of Police of Aspari in Alur circle states that on intimation received from the District Superintendent of Police to give necessary instructions to the Public Prosecutor he instructed the Public Prosecutor to oppose the bail application and he also produces Ex. A-111, a note in his diary about it.

25. Subsequently, the relations of Ayyappa Reddi and Chinna Reddi are stated to have approached the 1st respondent or his friends or workers including Linga Reddi, promising them active support for the candidature of the 1st respondent, if the accused in jail could be released on bail. Linga Reddi, who is alleged to have worked for the 1st respondent throughout the Constituency canvassing votes for

the 1st respondent, is said to have agreed to this proposal and asked the relations of the accused to file another application through another lawyer. Accordingly Ex. A-44 was filed on 19th December 1951 by Sri S. Venugopal, P.W. 29. Notice was given to Linga Reddi on 19th December 1951 and on 20th December 1951 the following order was passed:

> "The Public Prosecutor does not oppose. The petitioners will be released on bail on each of them executing a bond for Rs 500/- with two sureties for like amounts to the satisfaction of the Stationary Sub-Magistrate of Alur."

P.W. 40, a teacher in the Board High School has been examined by the petitioner in this connection He states that Linga Reddi came to his village in the second week of December, that Dobbala Veera Reddi sent Naganna to call him, that he went there and a little later he heard them talking about votes. On 13th December Dobbala Veera Reddi came to him again and asked him to accompany him to Bellary as he had to talk to Linga Reddi. As it was inconvenient for him on that day they are supposed to have gone to Linga Reddi's house on a Saturday at about 8 P.M. Linga Reddi is said to have enquired as to what Veera Reddi had done about the votes and Veera Reddi replied stating that his son was in jail and that if he was released on bail, he would do propaganda in the villages of Tangaradona, Turuvagallu, Benigere and Sankarabanda and get many votes as his son was the Village Munsif in Tangaradona. Linga Reddi then told him that he would try and asked them to get a petition filed through another lawyer and that he would do his best. It is said that on account of this arrangement, the Public Prosecutor did not oppose the second bail application and the accused and their relations are said to have vigorously canvassed support for the 1st respondent. The petitioner states that the procuring of the release of the two accused constitutes an offence of illegal gratification and the election is therefore void.

26. P.W. 31, the Assistant Superintendent of Police states that the Public Prosecutor, Linga Reddi did not consult him about the bail application and that he took part in the investigation. He states generally the Public Prosecutor has to consult any Police Officers who are in the know of the case. He did not know whether he consulted the Circle Inspector or the Sub-Inspector in the case.

27. P.W. 32 states that Ayyappa Reddi, Chinna Reddi and Dobbala Veera Reddi, worked on behalf of the 1st respondent in the village. He says he saw them canvassing for votes and going from house to house. He also states that he was not following them from house to house and does not know if they were going for gathering information for cross-examining the prosecution witnesses in the Sessions Case for defending themselves. He adds that it is only from what people told him that he came to know that they were canvassing for votes. This is at best hearsay evidence.

28. The son of the deceased by his concubine, Veera Reddi, has been examined as P.W. 42. He states that after the case was committed to the Sessions he sent a petition to the Secretary, Home Department, Government of Madras stating that he did not want H. Linga Reddi, the Public Prosecutor, to conduct the prosecution and that he should be allowed to engage another lawyer. He further states that when the case came on for hearing before the Sessions Judge he filed a petition Ex. A-108 for adjourning the case on the ground that he had not received orders on his application to the Government and that he filed along with that application, copies of the application to Government. The Sessions Judge refused to adjourn the case but allowed him to engage the services of one K. Ramachander, an advocate, to assist the Public Prosecutor, and if necessary to put any questions to the witnesses. He also admits that he sent this petition to Government after the declaration of the results of the election and denies that the petition was sent at the instance of the petitioner or that the petitioner helped him with funds to engage a lawyer.

29. The petitioner as P.W. 34 admits that the victim in Sessions Case No. 2 of 1952 was his partner in a cloth trade at Adoni and that he was interested in the affairs of that victim and that he opened the iron safe with the duplicate key and made a list of the articles and papers. He denies that P.W. 32 was one of the persons indebted to him or to his partner. He denies that P.W. 40 is also indebted to him. There can be no doubt that Linga Reddi, being a Public Prosecutor is a persons serving under Government of a State and comes under Section 123(8) if he has procured or abetted or attempted to obtain or procure any assistance for the 1st respondent and Linga Reddi admits having received a circular to that effect.

30. The 1st respondent at R.W. 5 denies all these charges, so also his election agent as R.W. 18. Linga Reddi himself is R.W. 20 and he states that he does not know the relations of the accused in Sessions Case No. 2 of 1952, nor has he visited Haligeri, the village of the accused. He denies that either P.W. 40 or Dobbala Veera Reddi came to his house or that he agreed not to oppose the bail application if they canvassed for the 1st respondent. As regards the bail application he states that his practice has been not to oppose bail generally after all the eye-witnesses and important non-official witnesses are examined in a murder case, unless he gets instructions from the Police that the witnesses are likely to be tampered with or terrified. He states that at the time of Exs. A-42 and A-43 he took full instructions from the Police and he had also all information regarding the case. He also says that at the time of the second bail application, Ex. A-44, he did not send for the Police because he was fully posted with the facts of the case and he had also taken instructions from the Assistant Public Prosecutor who was conducting the case in the lower Court. He further says that two days after the bail application, he actually saw the investigating officer in the hospital as an in-patient and this fact was stated in the petition Ex. A-44 as a reason for bail. It may be stated here that P.W. 28 S. Tirumala Rao speaks to the practice and says that in most of the cases since about 2½ years past Linga Reddi was not opposing bail after all the important non-official witnesses were examined in the committing Court, though he admits that the witnesses in this case did not speak about the actual occurrence. The order passed by the learned Judge in Exs. A-42 and A-43 indicates that it was not a case for granting bail and in spite of his practice it is unfortunate that R.W. 20 did not oppose the second bail application even without taking instructions from the Police. It is therefore indeed surprising that a month later when Ex. A-44 was moved, the Public Prosecutor should have suddenly changed his attitude. The case ended in a conviction in the Sessions Court though on appeal, the accused were acquitted by a Bench of the High Court (Ex. B-8) remarking that it would not be safe to convict them on the unsatisfactory evidence of P.W. 2 in the case and Ex. P-3. It was observed by the High Court:

> "Another circumstance to be borne in mind in considering the veracity of P.W. 2 is the fact that one Nathar Saheb who is alleged to have refused to carry the report to the Police Station in case the names of the assailants were mentioned in it has not been examined. He is a servant of the deceased and he would have certainly been available for examination either in the committing Court or in the Sessions Court. In his stead, P.W. 16, a person who is supposed to have been one of the party carrying the report has been examined."

and it was further observed:

> "One Sivappa who was examined in the committing Court was given up in the Sessions Court. No explanation is forthcoming as to why this witness was not examined in the Sessions Court. He was a material witness and his evidence would have been very useful in deciding the question as to the actual time of the occurrence in the case. This is an infirmity in the prosecution case which cannot be ignored."

31. It was argued on behalf of the petitioner that Linga Reddi did not oppose the bail application on the second occasion as the relations of the accused had approached him along P.W. 40. The direct evidence of P.W. 40 is not believable though some of the circumstances do appear to be suspicious. We would not be justified in finding that R.W. 20 did not oppose the bail application because of the promise by the relations of the accused to support the 1st respondent in his election. Issue 2 is accordingly found in the negative.

32. *Issue* 3 is "Whether the 1st respondent, his agent or any other person with his connivance or with the connivance of his agent published any statement of facts which is false concerning the personal character or conduct of the petitioner which was reasonably calculated to prejudice the prospects of the petitioner's election". The statements in question are Ex. A-11, a Telugu pamphlet printed at the Sharada Press, Adoni and Ex. A-4 a reprint thereof in the Swathantra Press at Kurnool. According to the particulars furnished in list No. 2 attached to the petition Kesava Reddi R.W. 18 the election agent of the 1st respondent procured one B. V. R. Reddi, a friend of his, a Socialist to prepare and sign the pamphlet Ex. A-11 printed at the Sharada Press, Adoni under the pseudonymous name "Socialist Party Adoni" and got it reprinted in the Swathantra Press, Kurnool.

33. These hand-bills contain 16 paragraphs and allege among other things that the petitioner had misappropriated public funds collected in various ways, had cheated the public and harboured murderers and was a black-marketeer and traitor

to the country. These allegations relate to the private character and conduct of the petitioner and no attempt was made to substantiate them though the petitioner was cross-examined with respect to some of them. In fact, the case of the 1st respondent is that he or his agent did not get these hand-bills printed or published and that he was not aware of them until the present election petition was filed. The 1st respondent has also not denied that these statements are calculated to prejudice the prospects of the petitioner's election.

34. P.W. 2 an advocate is a member of the Provincial Committee of the Socialist Party at Kurnool and his evidence is that about the end of December 1951, Mr. B. V. R. Reddi, a Socialist, came to him with a pamphlet similar to Ex. A-11 printed at the Sharada Press, Adoni. R.W. 18, Kesava Reddi was with B. V. R. Reddi, and the latter asked the witness whether he could get Ex. A-11 reprinted at Kurnool. As it was not the intention of their party to do such things, the witness dissuaded B. V. R. Reddi and they left. He had not met R.W. 18 before or after. Two or three days later he noticed a pamphlet like Ex. A-12 (similar to Ex. A-4) printed at Swathantra Press being circulated in Kurnool.

35. Ex. A-11 purports to have been printed in the Sharada Press at Adoni and as stated by the Manager of the Press who was examined as R.W. 10 for the 1st respondent that it was got printed by B.V.R. Reddi in his press. Ex. B-38 letter of authority and Exs. B-39 and B-40 corrected proofs signed by B. V. R. Reddi confirm his statement. Ex-facie Exs. A-4 and A-12 were printed in the Swathantra Press at Kurnool and it is not disputed that the Swathantra Press was doing the printing Jobs of most of the candidates who stood for the last election; P.W. 1 S. Maqbool Mia is the managing partner of that Press and his evidence is that 6 printing jobs (*vide* Exs. A-1 to A-6 copies marked) in connection with the candidature of the 1st respondent were executed by him under the orders of R.W. 18, Kesava Reddi, the election agent of the 1st respondent. R.W. 18 admits the printing in that press of Exs. A-1 to A-3 and A-6, but disputes that Exs. A-4 and A-5 were printed in that press. Ex. A-4 is a reprint of Ex. A-11, which has been proved through R.W. 10, the Manager of Sharada Press, Adoni to have been printed in that press. P.W. 1 is positive that R.W. 18 and B. V. R. Reddi came to his press with Ex. A-11 and asked him to print 5000 copies—*Vide* Ex. A-13 dated 25th December 1951 signed by B. V. R. Reddi. The order is reproduced hereunder.

SRI B. V. R. REDDI,
Bellary.
25-12-51.

				Rs.	A	P.
5,000 Hand Bills printing charges	0	0	0	45	0	0
(with paper) 1/6 size.						
Re-print of the Sharada Press leaflet of 15-12-51 on Y. G.						
Leaflets to be delivered to H. Kesava Reddi on payment				45	0	0

B. V. R REDDI. S. MAQBOOL.

The remark 'leaflets to be delivered to H. Kesava Reddi on payment' was written across the signature of B. V. R. Reddi by P.W. 1 after the order was completed.

The original of Ex. A-5 was not available with P.W. 1 and Ex. A-5, a printed copy produced on behalf of the 1st respondent was marked by consent. Ex. A-14 is the order given on the previous day and it is in these terms.

SRI B. V. R. REDDI.
Bellary
24-12-51.

				Rs.	A	P.
5,000 Hand bills printing charges				12	8	0
1/12 size (with paper)	2	8	0			
Delivered to H. Kesava Reddi on payment				12	8	0

B V. R REDDI. S. MAQBOOL.

P.W. 1 complied with the order under Ex. A-14 but was unable to supply 5000 copies under order Ex. A-13. For want of inferior paper he had to use superior paper and could supply only 4260 copies of 1/6th size for which he charged Rs. 51/- as against Rs. 45/- fixed in the order Ex. A-13.

A bill for all the items Exs. A-1 to A-6 was sent to Kesava Reddi on 28th December 1951 after giving credit to Rs. 70 paid as advance by R.W. 18 up to that date. (*Vide* Ex. B-1, original bill attached as a voucher to Ex. A-39 the return of election expenses). R.W. 18 was unable to produce a single copy of 1/6th size printed for him as per Ex. B-1 for which Rs. 51 was paid by him and was unable to state what the 4,260 pamphlets of 1/6th size supplied to him were. His belated explanation that item 4 must have been printed from some matter culled out from Exs. B-55 and B-56, printed copies of some Congress hand-bills is worthless, and an attempt through R.W. 10 that it is not possible to have a form of 1/6th size from double crown paper like Ex. B-48 used for Ex. A-4 failed. It was demonstrated before us and admitted by R.W. 10 that 1/6th size forms could be had from such paper. Moreover, P.W. 1 could not have anticipated that R.W. 18 would not have any copy for which he paid Rs. 51 if he had really printed some other copy than Ex. A-4 and it would have been suicidal for him to assert that Ex. A-4 was the 1/6th size pamphlet printed and supplied by him to R.W. 18. According to P.W. 1, No. 5 in Ex. A-15 corresponds to Ex. A-5 and the description in Exs. A-14 and A-15 tally. He says the original of Ex. A-5 could not be traced but nothing turns on this as the pamphlet was only a reply to the disclaimer of Ex. A-4 by P.W. 18 on behalf of the Socialist Party. P.W. 1 was executing the printing jobs of all the parties during the last election, and there is no reason to doubt his statements that Exs. A-4 and A-5 were printed in his press and delivered to R.W. 18.

36. In fact P.W. 1 received Ex. A-16, notice dated 11th February 1952 from P.W. 44 an advocate of Madras on behalf of the petitioner. His reply Ex. A-17 dated 24th February 1952 addressed to the petitioner was sent by registered post to the advocate P.W. 44 on 28th February 1952. This appears from the postal cover Ex. A-18, bearing the postal stamp dated 28th February 1952 and Ex. A-19 the postal receipt for the cover and Ex. A-20 the acknowledgment signed by the wife of P.W. 44 dated 29th February 1952. P.W. 44 is positive that Ex. A-17 is the reply received by him in the cover, Ex. A-20 and the suggestion that after the filing of the petition Ex. A-17 must have been substituted is fantastic. There is no ground whatever for our holding that either P.W. 1 or P.W. 44 could be a party to a substitution of this nature.

37. In the circumstances, there could be no justification for holding that Exs. A-4 and A-5 were not ordered and paid for by R.W. 18, the election agent, and as instructed by the 1st respondent R.W. 18 published all his election leaflets and kept his account and met the expenditure by receiving money needed from the 1st respondent's brother. P.W. 1 gave his evidence in a straightforward manner and it cannot reasonably be doubted, that the hand-bills Exs. A-4 and A-5 weer got printed in the Swathantra Press, Kurnool by R.W. 18, Kesava Reddi, the election agent of the 1st respondent and were paid for by R.W. 18.

38. P.Ws. 2, 3 and 34 speak to the distribution of pamphlets like Ex. A-4, though they do not state who distributed them. P.W. 35 is the 4th respondent and he produces a bundle of leaflets similar to Ex. A-4 marked as Ex. A-72 in the case and asserts that they were given to him at the Ajanta Hotel by R.W. 18 who asked him to help the 1st respondent by distributing them as the 4th respondent's. Chances were not bright. R.W. 18 denies having given the leaflets or having talked to him. The testimony of both these witnesses is interested and therefore cannot be relied upon. P.W. 7 speaks to the distribution of the pamphlets from a bus and also of pamphlets being distributed at a meeting and of Halvi Satyanarayana Rao, an advocate and Dr. Lakshmanan, P.W. 16 having told him that they were not printed by the Socialist Party. P.W. 7 admits he has been expelled from the Congress and that he now belongs to the Karnataka Unification Party. There can be no doubt that the pamphlets like Ex. A-4 were widely circulated in the Kurnool Constituency.

39. P.W. 15 is the present Secretary of the Yemmiganur Town Congress Committee and Joint Secretary of Bellary Andhra Congress Committee and also a member of the Andhra Provincial Congress Committee. At the time of the election he says he was the President of the Yemmiganur Town Congress Committee and worked for all the Congress candidates including the 1st respondent. He was also the polling agent of the 1st respondent and he says that he canvassed in November and December 1951 for the 1st respondent and the other Congress candidates. He says he has seen pamphlets like Ex. A-11 which were received from their Adoni election office in Yemmiganur. One Bendra Pappanna Gowd (R.W. 13) a brother-in-law of Machani Somappa R.W. 9 is said to have brought them. He admits having distributed these pamphlets in his village and also sent them to adjoining villages round.

about. He further states that he had also distributed these pamphlets to villagers who came to the shandy. He says that an election office was separately established at Adoni at the time of the elections and the persons who were running the election office were the District Congress Committee members. He states that when Pappanna Gowd brought pamphlets like Ex. A-11 no letter was received from the District Election Office, but Pappanna Gowd told him that he brought them from the District Election Office. He admits having read the pamphlets and says that he did not get suspicious about them. He says that it did not strike him why he should take responsibility of distributing them as it was all propaganda. He further states whatever they think is favourable to them they distribute. He admits he had no necessity to enquire into the truth or otherwise of the allegations contained in Ex. A-11. He says that depending upon the word of Pappanna Gowd that it emanated from the District Election Office, he took the responsibility of distributing them and as it was not a pamphlet published by his party he did not worry himself. In cross-examination, it was put to him that he contested the Andhra Provincial Congress Committee election against Halaharvi Hanumantha Reddi and Venkatarama Rao and a suggestion is made that the said Hanumantha Reddi was the person who proposed the 1st respondent's name for Parliamentary Election. This suggestion cannot in any way detract from his evidence, as it will be seen that he is also a Congressman working for the 1st respondent and was also appointed a polling agent of the 1st respondent by Ex. A-26, dated 25th December 1951. Another suggestion made against him is that the petitioner and P.W. 13 helped him in the Andhra Provincial Congress Committee Election. He, however, denies it by saying that they are not Congressmen at all. The last suggestion made against him is that he was a partner and clerk of one G. F. Sarabhanna and Brothers till six months ago and that Sarabhanna wears *lingam*, evidently the suggestion being the petitioner is a Lingayat and Sarabhanna is also a Lingayat. On the other hand the petitioner has filed Ex. A-71 copy of judgment in S.C. 14 of 1936 to show that P.W. 15 was a prosecution witness No. 6 against his own brother who was an accused in that case and has argued that P.W. 15 could not have any good feelings or love towards him. It is also suggested that there is some contradiction between his evidence and that of P.W. 7 as regards the 1st respondent addressing a meeting. We are, however, of the opinion that the contradiction does not in any way detract from the evidence. Apart from these suggestions, we do not find anything put forward against this witness. He gave his evidence before us in a straightforward manner.

40. It is however argued by the advocate for the 1st respondent that even if we should hold that P.W. 15 did distribute pamphlets, we must also hold that he was not an agent of the 1st respondent and that what he did was not with the connivance or knowledge of the 1st respondent. He has cited a passage from "Parkers Election Agent and Returning Officers"—page 110—

> "It has been stated that a member of a political association formed for, or active in, promoting a candidate's return is not necessarily an agent, even though the candidate subscribe to its funds; and that an association which confines itself to carrying out the general interests of the political body and the views it represents, and abstains from becoming the active assistant of a particular candidate, is not an agent".

The definition of agent is given in Section 79 thus

> "Agent includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate".

It may also be noted here that the authority by which an agent was empowered may be implied from circumstances.

41. The 1st respondent admits in his evidence that he was set up as a candidate by the Congress. It is also not denied that the officers and members of the Congress constituted in all places were working and canvassing for the Congress candidates to the knowledge of the 1st respondent. He says in his evidence as R.W. 5 "From 1935 till now I have been actively associated with the Congress and went to jail twice, once in 1941 and again in 1942, when I was detained". We have also the evidence of P.W. 15 himself that he was working for the Congress and for the 1st respondent. The 1st respondent admits that R.W. 9 was his agent and looking after the election on his behalf in Yemmiganur. R.W. 9 admits in his evidence that he called for a meeting in his house of all the Congress members, including P.W. 15

though he held no office in the Congress. If really P.W. 15 was not an agent and did not canvass for the 1st respondent, we do not see any motive for R.W. 9 to call him for the meeting and direct him to work for all the Congress candidates R.W. 9 state as follows:

> "I was the person chiefly organising the elections at Yemmiganur and in the Sub-Taluk of Yemmiganur on behalf of the Congress. Now and then I was receiving literature about Congress elections, as well as symbols. I was doing this election work from my own office in my house. I was doing this voluntarily" and not as an office bearer. There is a Congress office at Yemmiganur. There were some people there doing election work. From about 5 days before elections the entire election work on behalf of the Congress was being done from my office and not from the Congress office. The officials of the Congress used to come daily to my office".

In the face of this evidence, it is difficult to hold that P.W. 15 is not an agent of the 1st respondent as laid down in Section 79 of the Act. It is not denied in this case that the 1st respondent contested the elections on the Congress ticket and the Congress organised meeting etc., in the furtherance of the cause of his election. We have also the further fact in this case that the 1st respondent paid Rs. 1,000 to the Congress organisation for meeting the expenses of canvassing for his election and this amount has been shown in his return of Election expenses. On the evidence and circumstances in this case we have no hesitation in holding that P.W. 15 was an agent of the 1st respondent.

42. R.W. 13, who has been examined states that he did not take the pamphlets and give them to P.W. 15. He, however, admits having gone to the office of P.W. 15 and received the electoral roll from him. In the counter, R.W. 1 has stated that Pappanna Gowd was not his agent. But R.W. 13 in his evidence states that he worked for Congress and also was a relief polling agent of R.W. 1 at Gudikal. He also admits that he complained to the Police and Revenue authorities against the petitioner and his denial that he did not distribute the pamphlets or take them to P.W. 15 cannot be true. We hold that he also distributed the pamphlets and this is supported by the evidence of P.W. 19 the karnam of Gudikal whose evidence will be referred to a little later.

43. R.W. 9, Machani Somappa has been examined by the 1st respondent in order to nullify the effect of the evidence of P.W. 15. R.W. 9 states that he was working for the 1st respondent and was looking after the elections and that about 7 or 8 days before the elections he came to know that P.W. 15 was not working for the 1st respondent and he received information that he was working for the petitioner. As stated already, he is supposed to have called for a meeting of all the Congress workers in Yemmiganur including P.W. 15 and stated at the meeting generally that all of them should work whole-heartedly for all the Congress candidates and see that the Congress succeeded in the elections. He also states that he had the election office transferred to his house after that meeting. He admits that there was no notice of meeting or any agenda for the meeting and that he does not hold any position or office in the Congress organisation. He also admits that he recommended the name of P.W. 15 as a polling agent as he would not be able to do any position or office in the Congress organisation. He also admits that there for the petitioner and if there was a meeting as stated by R.W. 9 these suggestions and facts should have been put to P.W. 15 in cross-examination, when he was in the box and his explanation elicited. Not a single question has been put to P.W. 15 about his working for the petitioner and the meeting said to have taken place 7 or 8 days before the election. If really P.W. 15 worked for the petitioner and if there was really the meeting spoken to by R.W. 9 one would have expected P.W. 15 being not appointed to a responsible office as polling agent where he had to look after the interests of the 1st respondent. The explanation given by R.W. 9 that it was a safe place does not convince us. We are not prepared to attach any weight to the evidence of R.W. 9 on this point and we find that P.W. 15 is a witness speaking the truth especially when we know that the act done by him entails serious consequences as well as penalties under Sections 141 to 143 of the Act, and no person in his position would have spoken falsely and admitted having distributed pamphlets.

44. The petitioners have also produced evidence to show that pamphlets like Ex. A-11 were not printed by the Socialist Party, Adoni, by calling in the evidence of P.W. 16 and P.W. 18. P.W. 16 is a member of the executive committee of the Socialist Party. He states neither he nor his party placed any orders with Sharada Press, Adoni, or any other press to get pamphlets like Ex. A-11 printed. He says that he saw the pamphlets on 15th December 1951. He says he went immediately to Sharada Printing Press and enquired how it was printed, and that

the manager of the Press showed him the manuscript order placed with him by B.V.R. Reddi. He admits B.V.R. Reddi is a member of the Socialist Party. He says that he was not holding any office in Adoni Socialist Party then. He also states that till May or June 1951, B.V.R. Reddi was Secretary of the Adoni Socialist Party and since then he held no office in the party. Immediately the Socialist Party sent the letter Ex. A-30 to the petitioner disowning the pamphlet and issued Ex. A-31 signed by the Secretary, Balaram Singh, P.W. 18 disowning the authorship of the pamphlet, Ex. A-32. He admits that B.V.R. Reddi is a member of the Socialist Party and that there were differences between B.V.R. Reddi and the other members of the Socialist Party.

45. P.W. 18, the Secretary of the Socialist Party corroborates P.W. 16 and speaks to having sent notices to the press not to publish anything which is not authorised by the party Secretary and speaks to Exs. A-31, A-32 and A-33.

46. P.W. 19 is the karnam in office in Gudikal. He states that he has seen pamphlets like Ex. A-11 and he says Pappanna Gowd, R.W. 13, of the village distributer them and that Pappanna Gowd was the polling agent on behalf of the 1st respondent. He says that 8 or 10 days before the election Pappanna Gowd made the distribution. But he says he cannot give the date nor say how many pamphlets were distributed. He says he saw him distributing in each house and shop, but however says that he did not tell this to the petitioner till now. He admits that there are security proceedings between the petitioner and Pappanna Gowd and that he was a defence witness for the petitioner in the case against him. He says he does not remember whether he was a prosecution witness for Pappanna Gowd in the criminal case disposed of in March. He says he does not belong to any party. In re-examination, he said that these security cases started after the elections. The suggestions made against this witness to our mind do not in any way go to disprove his evidence and we see no reason to disbelieve this witness.

47. P.W. 21 is a resident of Lanjapolur having five acres of land. He says he saw printed leaflets like Ex. A-11 being distributed by Kesava Reddi eight days before the election. He says that the petitioner came to his village four days before the election and that about 30 or 50 persons including himself met him. He is supposed to have asked the petitioner about Ex. A-11 and as to whether the allegations were true or false. The petitioner replied stating that they were false and that people who had 'Kakshi' with him got them published. The petitioner is alleged to have asked him as to who distributed those pamphlets and he says that he told him that Kesava Reddy distributed them. In cross-examination he admits that he was a Jangam Lingayat and that he does not remember the date or day of the week when he saw Kesava Reddi distributing. He says he distributed them at the school and to the ryots at about 6 P.M. He is supposed to have asked Kesava Reddi on whose behalf he was working and Kesava Reddi is said to have replied that he was working on behalf of the 1st respondent. Kesava Reddi stayed there from 6 P.M. till 8 P.M. He, however, admits that R.W. 1 N. Sankara Reddi the present Honourable Minister for Local Administration was with him and that he was sitting inside the school. Kesava Reddi was sitting inside the school after people gathered and distributed. R.W. 1 has given evidence in this case and it will be convenient to refer to it here. He states that he knows Kesava Reddi and that he came to know him after the meeting in Pattikonda. He says he toured with Kesava Reddi on four different occasions in connection with the election. He says that Kesava Reddi himself and R.W. 2 D. Sanjivayya the present Honourable Minister for Co-operation and Housing went to Lanjapolur and that Kesava Reddi did not distribute any pamphlets against the petitioner at Lanjapolur to his knowledge, nor did he distribute them at any other place. He states that he never saw Kesava Reddi distributing pamphlets of that kind. R.W. 2 also states that he knows Kesava Reddi for a long time even from his college days. He says that he was touring along with him in elections right through, as long as he was in Pattikonda, Kurnool Taluks, except probably on one or two occasions. He says "We went to Lanjapolur once but I cannot say how many days before the elections and R.W. 1 was with me. I have seen pamphlets like Exs. A-4 and A-11 in the hands of the electorate. Mr. H. Kesava Reddi never carried such pamphlets or distributed them at any place. At Lanjapolur I was throughout with him and never left him". The evidence of R.W. 1 and R.W. 2 is not inconsistent with that of P.W. 21 because P.W. 21 says that Kesava Reddi distributed pamphlets outside and R.W. 1 was sitting inside the school. It is also clear from the evidence of R.Ws. 1 and 2 that pamphlets like Ex. A-4 were seen by them.

48. Considering the entire evidence we find on this issue that R.W. 18 was responsible for the printing, publishing and circulating the hand-bills similar to Ex. A-4 which were false concerning the personal character and conduct of the

petitioner and which were calculated to prejudice his prospects at the election and found accordingly. We find further that P.W. 15 and R.W. 13 were the agents of the 1st respondent and as such agents distributed the pamphlets. This issue is answered accordingly.

49. *Issue No. 6.*—As we have found on issues 1, 2, 4, and 5 in the negative, the question whether the 1st respondent is protected by having complied with Section 100, clause (3) of the Act does not arise. He has however given evidence in the case that he instructed all his agents to take all reasonable means for preventing the commission of corrupt or illegal practices at the election and he has also examined R.Ws. 16 and 17 who speak to the 1st respondent having instructed them to carry on the propaganda on Congress principles and not to indulge in corrupt practices of bribery, threat or undue influence.

50. But so far as issue 3 is concerned, our finding being that the election agent R.W. 18 is guilty of printing and publishing false statements against the petitioner's private character and conduct, Section 100(3) affords no protection to the 1st respondent in spite of his instructions. There is no direct evidence that R.W. 18 printed these pamphlets under the authority or in consultation of the 1st respondent and it is possible that R.W. 18 the election agent who is related to him and was in charge of the publication of the 1st respondent's election leaflets did it without the knowledge of the 1st respondent. We have therefore to give the benefit of doubt to the 1st respondent on this matter and to hold that the 1st respondent was not a party to their publication and circulation.

51. *Issue No.* 11.—On our finding on issue 3 that the 1st respondent's election agent R.W. 18 has been guilty of a major corrupt practice under Section 123(5) the petitioner is entitled to a declaration under Section 100(2) (b) that the election of the 1st respondent is void. We order accordingly.

52. *Issue No.* 12.—We hold that the petitioner is entitled to his costs from the 1st respondent and we fix the advocate's fee at Rs. 1000/-.

Pronounced in open Court this 24th day of February 1953.

(Sd.) N. D. KRISHNA RAO, *Chairman.*

(Sd.) D. RANGAYYA, *Member.*

(Sd.) K. P. SARVOTHAMA RAO, *Member.*

BEFORE THE ELECTION TRIBUNAL, BELLARY

Tuesday, the 24th day of February 1953.

PRESENT:

Sri N. D. Krishna Rao, M.A., Bar.-at-Law, I.C.S.—*Chairman.*

Sri D. Rangayya, B.A., B.L.—*Member.*

Sri K. P. Sarvothama Rao, B.A., B.L.—*Member.*

ELECTION CASE NO. 2 OF 1952

(Election Petition No. 52 of 1952 before the Election Commission, India)

BETWEEN

Y. Cadilingana Gowd—*Petitioner.*

AND

1. H. Sitarama Reddi,
2. M. Venkatasubbayya Naidu.
3. Nadimulla Syed,
4. N. Vembu—*Respondents.*

This Election Case coming on for final disposal before us this day, in the presence of Sri K. Nagarajan and Sri K. Chennabasappa, advocates for the petitioner, and of Sri D. Venugopalachari and Sri N. Mrityunjaya Sastri, advocates for the 1st respondent, Sri D. Govindaswami Rao, pleader for the 2nd repsondent, the 4th respondent appearing in person, and the 3rd respondent being absent, *ex parte*, the Court made the following order.

ORDER

(The order of the Tribunal was delivered by Sri K. P. Sarvothama Rao).

Section 99 of the Representation of the People Act enjoins on the Tribunal to pass at the time of passing order under Section 98 order recording a finding as to the persons guilty of having committed major corrupt practices as laid down by the Act.

2. We hereby record the finding that H. Kesava Reddi, the election agent of the 1st respondent (R.W. 18 in the case) is guilty of having printed and published and circulated statement of fact which is false concerning the personal character and conduct of the petitioner Ex. A-4 in the case contrary to the provisions of Section 123(5) of the Representation of the People Act, 1951.

3. We also find Varam Bhimappa of Yemmiganur, P.W. 15, an agent and canvassor of the 1st respondent guilty of circulating Ex. A-4 contrary to the provisions of Section 123(5) of the Representation of the People Act, 1951.

4. We also find B. Papanna Gowd of Gudikal, R.W. 13, an agent and canvassor of the 1st respondent is guilty of having circulated Ex. A-4 contrary to the provisions of Section 123(5) of the Representation of the People Act, 1951.

Pronounced in open Court this 24th day of February 1953.

(Sd.) N. D. KRISHNA RAO, *Chairman.*

(Sd.) D. RANGAYYA, *Member.*

(Sd.) K. P. SARVOTHAMA RAO, *Member.*

[No. 19/52/52-Elec.III.]

S.R.O. 509.—WHEREAS the election of Shri Fazlul Haq, as a member of the Legislative Assembly of the State of Uttar Pradesh from the Rampur City Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951, by Shri Aslam Khan, Pleader, son of Shri Yaqut Khan, Zina Inayat Khan, Rampur;

AND WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

BEFORE THE ELECTION TRIBUNAL AT BAREILLY.

PRESENT:—

Sri D. S. Mathur, I.C.S.—*Chairman.*

Sri D. R. Misra—*Member.*

Sri J. K. Kapoor—*Member.*

ELECTION PETITION NO. 168 OF 1952

Sri Aslam Khan—*Petitioner.*

versus

1. Sri Fazlul Haq,
2. Sri Yunus-Ul-Rahman,
3. Sri Mahmood Hasan Khan,
4. Sri Bhukan Saran,
5. Sri Ram Prakash—*Respondents.*

Sri S. N. Dwividi, Advocate, assisted by Sri Manmohan Lal Mathur, Advocate, and others appeared for the petitioner.

Sri T. N. Sethi, Advocate, and others appeared for Sri Fazlul Haq, respondent No. 1.

JUDGMENT

This is a petition under section 81 of the Representation of the People Act, 1951 (Act XLIII of 1951), by Aslam Khan to have the election of Fazlul Haq, respondent No. 1, to the Uttar Pradesh Legislative Assembly, held on the 22nd of January, 1952, in the Rampur City Constituency No. 38 declared void on the ground that the result of the election had been materially affected by the improper rejection of the petitioner's nomination.

The notice of this petition was served on all the five respondents, but only the returned candidate, *viz.*, Fazlul Haq respondent No. 1, has appeared to oppose the petition.

The admitted facts of the case, or those which have not been seriously challenged by the contesting respondent, are as below:—

Aslam Khan, petitioner, was born at Rampur in the year 1911 of parents who were all residents of that very city. His wife and relations-in-law are residents of Rampur City. The petitioner is also a resident of Rampur. He was educated at Rampur, Aligarh and Allahabad. He joined the services of Rampur State as a Magistrate in 1935 and had worked in different capacities, *e.g.*, District Magistrate and Secretary to the Government of Rampur State for Civil Defence and Rationing. He resigned from the services of the Rampur State in 1945, according to the petitioner, on account of some differences with His Highness the Nawab of Rampur. Sometimes in the end of 1945 he joined the services of the Government of India and was appointed on a temporary post of Manager of Employment Exchanges under the Directorate of Re-Settlement and Employment, Labour Department. Subsequently, on the recommendation of the Federal Public Service Commission he was appointed Assistant Director of Employment Exchanges, under the same Department of the Government of India. The order of appointment is dated 20th May 1947 (Ex. 9). The appointment was for a period of three years or for the duration of the scheme of Re-Settlement and Employment, whichever was shorter, and the services could be terminated on a notice of three months on either side. On the creation of the two Dominions, on partition of the country, the petitioner was, like other Government servants, given an option to serve in India or in Pakistan. The reply sent by him is contained in Ex. A7 dated 24th June 1947. He thus elected to serve in Pakistan, and in his reply (Ex. A7) he clearly indicated that his choice was final and not provisional. At this place it may be mentioned that if the choice was provisional, the Government servant had another opportunity to reconsider and to indicate his final choice within a period of six months from the date of transfer of power (15th August 1947). Accordingly, under orders dated July 30, 1947 (Ex. 2), the petitioner who was then working as Assistant Director, Employment Exchanges, Lucknow, was directed to be relieved forthwith and to proceed to Lahore to take over charge there in the same capacity before the 14th of August, 1947. The petitioner handed over charge at Lucknow and visited Rampur on his way to Pakistan. He came to Rampur in the first week of August, 1947 and proceeded to Lahore *via* Moradabad after staying at Rampur for a few days. He finally returned to Rampur on the 4th or 5th of February, 1948, and sometimes in the month of March, 1948, submitted his resignation from Pakistan services. He thereafter got himself enrolled as a Pleader in the then Rampur High Court, and on the merger of the State with the Uttar Pradesh he got himself enrolled as a Pleader in the Allahabad High Court. He throughout practised as a Pleader at Rampur.

Rampur State had acceded to India. The Instrument of Accession was signed by His Highness the Nawab of Rampur on 7th August 1947 and was accepted by the Governor General on 16th August 1947; but it took effect from the mid-night of the 14/15th of August, 1947. On the 8th of January, 1948, His Highness the Nawab of Rampur issued a Farman promulgating constitutional reforms for Rampur. A copy of the Farman, as amended up to the 1st of August, 1948, is contained in the Rampur State Gazette dated 14th August 1948 (Ex. 6). It was announced that elections to the new Legislature of Rampur State would take place, and this new Legislature would continue to function until the new constitution was framed by this Assembly in its capacity as the Constituent Assembly of the State and until its dissolution in conformity with the decision to hold general elections in the States of the Indian Union. The election rules were published in the Rampur State Gazette (Extraordinary) of the 29th of March, 1948, (Ex. 4). Preliminary steps for preparation of the electoral roll were also taken. Under Notification No. 602 dated 29th March 1948 published in the Rampur State Gazette of the 3rd of April, 1948, (Ex. 5) Sri Nasir Uddin (P.W. 2), the then Civil Judge, was appointed the Revising Officer of the Rampur City West Constituency to hear claims and objections to the provisional electoral roll. The name of Aslam Khan, petitioner, was included in the provisional electoral roll. Salamat Ullah Khan and Yunus-Ul-Rahman filed objections to the inclusion of his name in the electoral roll on the ground that he was not a permanent resident of Rampur, having gone to Pakistan. The objections were disallowed. Thus the petitioner stood for election to and was elected as a Member of the Legislative Assembly of Rampur. Eventually, he was elected as the Speaker of this Assembly. The powers of Minister were then conferred upon him under orders dated 11th September 1948 of His Highness the Nawab of Rampur (Ex. 3).

His Highness the Nawab of Rampur acceded to the Dominion of India full and exclusive authority, jurisdiction and powers for and in relation to the governance of Rampur State and agreed to transfer administration of the State to the Dominion Government on the 1st of July, 1949, under the agreement dated 15th of May, 1949. The Rampur Merger Agreement is contained in Appendix XXIII at page 209

of the White Paper on Indian States (Ex. A6). The administration of Rampur State was originally taken up by the Government of India, but on 29th November 1949 Rampur State was merged with and became a district of the Uttar Pradesh.

The name of Aslam Khan, petitioner, was included in the provisional electoral roll prepared for the Rampur City Constituency No. 38 and was also included in the final electoral roll, as no one raised an objection to the inclusion of his name. During the general elections of 1951-52 of the Uttar Pradesh Legislative Assembly, he (petitioner) was along with the five respondents a candidate for election to the Legislative Assembly from the Rampur Constituency. He filed five nomination papers on November 23, 1951, and two on November 24, 1951. On the date of scrutiny of nomination papers, *i.e.*, on 27th November, 1951, two candidates, *viz.*, Yunus-Ul-Rahman and Ram Prakash, filed objections to the nomination papers of the petitioner. For the purposes of this petition it is unnecessary to refer to the objections raised by Yunus-Ul-Rahman. The objection raised by Ram Prakash was that Aslam Khan, petitioner, was not a citizen of India as laid down under the Constitution of India. The Returning Officer held an enquiry, recorded the statements of the petitioner and his witnesses, *viz.*, Salamat Ullah Khan and Nasir Uddin, which are Exs. A1 to A3, and allowed the objection of Ram Prakash. The order of the Returning Officer is dated 29th November 1951 (Ex. 1). He was of opinion that Aslam Khan, petitioner, was not a citizen of India and was consequently disqualified under Article 191(1) (d) of the Constitution of India for being chosen as a member of the Legislative Assembly. All these seven nomination papers of the petitioner were, therefore, rejected. Fazlul Haq, respondent No. 1, was declared elected as a result of the elections held on the 22nd of January, 1952. Aslam Khan has moved the present petition challenging the above result of the election on the ground that he was a citizen of India and consequently his nomination papers were improperly rejected by the Returning Officer.

In addition, the petitioner has alleged that he had gone to Pakistan as a 'Careerist' as there was a good chance of quick promotion and of getting a higher salary in Pakistan; that he had left his family at Rampur and had visited Rampur twice, once in the month of September and October, 1947 and the second time in the month of November, 1947 when his son was seriously ill; that he did not dispose of his properties before leaving for Pakistan and had left at Rampur all his movable and immovable properties other than the personal clothes contained in two boxes; that he did not acquire any property in Pakistan and did not take any house on rent while staying at Lahore; that he first of all stayed in a hotel and thereafter as a guest with his friend, Sri Farid, who was Station Director of the Pakistan Radio at Lahore; and that he (petitioner) had no intention to settle in Pakistan and had given expression of his intention to his friends both at Rampur and in Pakistan that he would eventually return to India. In this connection the petitioner also mentioned that he did not acquire the Pakistan nationality, nor did he take any oath of allegiance to the Pakistan Government, and left Pakistan long before such an oath could be taken. The contesting respondent had admitted in the statement under Order X C.P.C. that the petitioner had left all his movable and immovable properties at Rampur, but during the evidence it was suggested that the petitioner had no immovable properties of his own and such immovable properties were inherited by him along with others from his father and that the movable properties with the petitioner were few and not expensive. On other points the case of the contesting respondent is that the family of the petitioner left for Pakistan a few months after his departure and returned to Rampur after he had come back and that the intention of the petitioner was to settle in Pakistan. An attempt was made to prove that the petitioner was a Muslim Leaguer who had an interest In Pakistan, and consequently he could have no intention other than to settle in Pakistan.

On the pleadings of the parties the following issues were framed:—

1. Whether the nomination papers of the petitioner were improperly rejected under section 36(2) (a) of the Representation of the People Act. XLIII of 1951?

2. If so, whether the result of the election has not been materially affected by the improper rejection of the petitioner's nomination papers?

Findings.

Issue No. 1.—The first point taken up on behalf of the petitioner is that on the republication of the amended electoral roll under Rule 19 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, no objection could be taken against the qualification of an elector included therein and under section 36(7) of the Representation of the People Act, 1951, the Returning Officer could only

consider the other disqualifications, if any, disentitling him from standing for election to the Legislative Assembly. It was thus suggested that after the electoral roll had become final, the petitioner would be deemed to be a citizen of India and that he can be disqualified from standing for election to the Legislative Assembly on this ground only if he ceased to be a citizen of India after the publication of the electoral roll. As the petitioner had not gone to Pakistan after the republication of the electoral roll, it was urged that he would at least for the purposes of the elections of 1951-52, be deemed to be a citizen of India, and consequently his nomination papers should not have been rejected. It was further urged that in view of section 100(1) (c) of the Representation of the People Act, 1951, it was not open to the Election Tribunal to consider if the petitioner was qualified or was not disqualified to stand for election to the Legislative Assembly and that the Tribunal has only to consider if the nomination of any candidate was improperly accepted or improperly rejected. In other words, it was suggested that the Tribunal was also bound by the electoral roll republished under Rule 19 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, and as such it has only to consider if after the republication of the roll the petitioner ceased to be a citizen of India, and if not, he would be deemed to be a citizen of India and qualified to stand for election unless not qualified or disqualified on other ground not already decided or taken into consideration while preparing the final electoral roll. On the other hand, it was urged on behalf of the contesting respondent that both the Returning Officer and the Tribunal were competent to consider if the candidate possessed the requisite qualifications and was not disqualified under the Constitution of India or under any law made by the Parliament.

Both the contesting parties have invited our attention to the cases decided by the Election Tribunals in the past. But it may beforehand be mentioned that there has been a substantial change in the law relating to the election petitions. Under clause 7(1) (c), Part III, of the Government of India (Provincial Elections) (Corrupt Practice and Election Petitions) Order, 1936, the election of the returned candidate could be declared void if the result of the election had been materially affected by the improper acceptance or rejection of any nomination, or by reason of the fact that any person nominated was not qualified or was disqualified for election. The words 'or by reason of the fact that any person nominated was not qualified or was disqualified for election' have been omitted from section 100(1) (c) of the Representation of the People Act, 1951. Thus in one way the powers of the Election Tribunal are the same as of the Returning Officer, and the election can be declared void under this sub-clause only if the nomination had been improperly accepted or rejected. In other words, if the acceptance or rejection was proper, this Tribunal cannot declare the election to be void. It has thus to be considered if the Returning Officer had improperly rejected the nomination or not.

In the case of Mohammadan Rural Saharanpur District (North) Constituency, Ch. Zafar Ahmad *versus* M. Munfait Ali and others, reported at page 69 of the Indian Election Cases, Volume I, by Doabia, the votes of certain voters who were minors but whose names were entered in the electoral roll were declared valid on the ground that the roll prepared for the constituency was conclusive evidence for the purpose of determining whether any person recorded therein was or was not an elector in the Constituency; and that any objection based on the mistakes in the electoral roll was barred by Rule 44 of the Rules regarding the preparation, revision and publication of the electoral rolls except in cases of persons with a statutory disqualification. A similar view was taken in Babu Rup Narain *versus* K. Rajendra Singh (U.P. Legislative Council Barabanki-*cum*-Fezabad General Rural Constituency), reported at page 347 of the Indian Election Cases, Volume II, by Doabia. Section 62 of the Representation of the People Act, 1951, lays down a similar rule, and an elector whose name is entered in the electoral roll of any constituency can vote in that constituency unless he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1951 (Act XLIII of 1951). Thus according to these two cases, and also on interpretation of section 62 of the Representation of the People Act, 1951, the electoral roll is final for the purposes of the right to vote only if there is no statutory disqualification disentitling that person from casting a vote in that election.

The next case is that of U.P. Anglo-Indian Constituency, Mr. H. H. J. Mills and others *versus* Mr. H. G. Walford, reported at page 106 of the Indian Election Cases, Volume II, by Doabia. The relevant portions of this case are as below:—

> "Anglo-Indians are not included in the clauses mentioned in 12(a). Clause (b) deals with 'any other seat' which includes an Anglo-Indian seat. As far as 12(b) is concerned, any person who is entitled to vote in the Anglo-Indian Constituency is entitled also to stand as a candidate.....

The qualification that the man must be a non-Mohammadan being repeated under the rule for candidature, the absence of the qualification was treated as a disqualification. But the particular point which impresses us in the case of Anglo-Indian Constituency of the United Provinces is that there is no such repetition. So far as we have been able to see, the qualification for a candidate is merely that he should be entered upon the electoral roll".

Thus the objection of the petitioner that H. G. Walford was not an Anglo-Indian and was consequently not entitled to stand for election from the Anglo-Indian Constituency was disallowed. The Election Commissioners did not express any final opinion as to the finality of the electoral roll in cases where a qualification, the presence of which was necessary before a man should be put on the electoral roll is repeated among the special qualifications for candidature. But if their report is read as a whole, it would appear that they were inclined to be of opinion that in such a case the special qualifications for the candidature could be reconsidered even if an objection on these points was to be raised or could be raised at the time of the preparation of the electoral roll. In the Punjab Anglo-Indian constituency Case No. 2. Mr. S. R. Lewis *versus* Mr. C. E. Gibbon, reported at page 259 of the Indian Election Cases by Doabia, Volume I, a similar point was raised and the objection was disallowed. The observations made in this connection are as below:—

"The objection of the respondent to the nomination of the petitioner is to the effect that the petitioner is not an Anglo-Indian and as such should not have been entered in the electoral roll of the constituency. There is no question of respondent being subject to any disqualification so far as this objection is concerned. The Returning Officer, in view of the provisions in Rule 3, quoted above, was bound to accept the production of a certified copy of the electoral roll as conclusive evidence of his right to stand for election and to dismiss the objectins".

In this case it was not considered if the qualifications necessary for an elector could be reagitated at the time of scrutiny of nomination papers, if similar qualifications were prescribed afresh for candidates to the Legislative Assembly. But the portion under-lined does not indicate that the absence of a statutory qualification could be deemed to be disqualification.

The next case is of the Bengal Legislative Council Rajshahi-*cum*-Malda Mohammadan Constituency Maulvi Tahur Ahmed Choudhury *versus* Maulvi Humayun Raza Choudhry and another, reported at page 17 of the Indian Election Cases, Volume II, by Doabia. The point for determination in this case was whether the electoral roll was binding on the Tribunal regarding the residential qualification of an elector, but the Election Commissioners made certain observations of general nature which indicate that a statutory disqualification could be considered by the Election Tribunal even if similar qualification or disqualification was prescribed for the electors and was to be taken into consideration while preparing an electoral roll. These observations (at page 20) are as below:—

"In a large number of cases, both Indian and English, it has been held that the electoral roll as finally published is binding on the Election Commissioners except when there are statutory disqualifications".

A similar view was taken in the Bengal Legislative Council Case No. 2, Nawab Sir K. G. M. Faroqui *versus* Maulvi Mohammad Habib Ullah and others, reported at page 24 of the same Volume. At page 34 it was observed as below:—

"We are not now concerned with questions of statutory disqualifications for which both the Returning Officers scrutinising nominations and an Election Tribunal has in all cases been allowed to go behind the electoral roll".

It appears unnecessary to refer to other findings of the Election Commissioners as the law has since been changed and the Tribunal has now only to consider if the nomination had been improperly rejected or accepted, and not if the candidate was not qualified or was disqualified for election.

Lastly, there is a case of Golaghat (N.M.R.) 1924 (Assam Legislative Council), Srijut Tara Prasad *Vs.* Rai Bahadur Devi Charan Baruah, reported at page 375 of the Hammond Election Cases India and Burma 1920-1935, where the age of the elector as entered in the electoral roll was not held to be final, and the petitioner was permitted to lead evidence on the age of the candidate.

A reference may also be made to an English Case, Steew *versus* Jelliffee, referred to at page 215 of the Law of Elections and Election Petitions in India and Burma by Jagat Narain. The relevant portion is as below:—

> "I think the true construction of these sections is to make the register conclusive not only on the Returning Officer but also on any Tribunal which has to inquire into elections, except in the case of persons ascertained by the proviso at the end of section 7. These are 'persons prohibited from voting by any statute or by the common law of Parliament.
>
> I do not think that these words are pointed at any of the cases which my brother Mellor has referred to us..... Non-residence within the proper distance of the borough; non-occupation: insufficient qualification—none of these things appear to satisfy the words of this proviso. It does not mean persons who from failure in the incidents or elements of the franchise could be successfully objected to on the revision of the register; it means persons who from some inherent or for the time irremovable quality in themselves have not, either by prohibition of statutes or at common law, the status of Parliamentary electors. Such, for example, are peers, whether of the United Kingdom, or of Scotland, or of Ireland, persons holding certain offices or employments the subjects of statutory prohibitions, and persons convicted of crime which disqualify them from voting. I do not say that this list is exhaustive. It is enough to give examples of the cases in which I think the register would be still open".

Thus in this English Case also the electoral roll was deemed to be final except where there existed a statutory disqualification of a personal nature. In this connection it may be observed that the law in England has since been replaced by the Representation of the People Act, 1949, (12 & 13 Geo. 6, c. 68) reported at page 367 of the Parker's Election Agent and Returning Officer, Fifth Edition. In this Act it has been clearly provided in section 39 on which matters the register of parliamentary electors is conclusive. These matters chiefly relate to the residence and the address of the elector.

From the above it will, therefore, appear that the view taken by most of the Election Tribunals in India, and also in England, is that the lack of a statutory qualification can be deemed to be a disqualification, and the absence of such qualification or of the statutory disqualification can be looked into both by the Returning Officer and the Election Tribunal, and to this extent the electoral roll would not be conclusive.

We now come to the law applicable to the preparation of the electoral roll and also to the qualifications necessary for candidates to the Legislative Assembly and also the disqualifications which would debar them from standing for election to the Assembly. Article 326 of the Constitution of India lays down the qualifications of an elector to the House of the People and to the Legislative Assembly of a State, and they are that he should be a citizen of India, aged not less than 21 years, and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice. The disqualifications for registration in the electoral roll are laid down in section 16 of the Representation of the People Act, 1950, and they are similar to the qualifications as provided in Article 326 of the Constitution of India. Thus one of the qualifications of an elector is that he should be a citizen of India. At the same time it is provided in section 16 of the Representation of the People Act, 1950, that a person will be disqualified for registration in an electoral roll if he is not a citizen of India. The electoral roll is prepared under the Representation of the People (Preparation of Electoral Rolls) Rules, 1950. First of all a draft electoral roll is published under Rule 9, and it becomes final after claims and objections against such electoral roll have been decided by the Revising Officer or it has been revised according to the rules by a competent Officer. The electoral roll as amended becomes final and is re-published under Rule 19. It is nowhere provided in the Representation of the People Act, 1950, and the Representation of the People (Preparation of the Electoral Rolls) Rules, 1950, on which matters the electoral roll would be final. But on principle of equity it can be deemed to be conclusive only on such matters on which an objection could have been made at the time of its preparation and the law does not provide for the raising of a similar objection at a subsequent stage. In other words, therefore, if the qualifications of a candidate standing for election to the Legislative Assembly are laid down with reference to the electoral roll or the right of vote, no objection can be raised at a subsequent stage on the points necessary for the preparation of the electoral roll or on the qualifications which were necessary for an elector. But if so me or all

of the qualifications are repeated, such objections can be raised at subsequent stages on the ground that they amount to statutory qualifications and their absence would amount to a disqualification. In the past the qualifications of all such candidates were not necessarily repeated and this was why it was held in the cases of Anglo-Indian Constituencies that the status of the candidate, whether he was an Anglo-Indian or not, could not be reagitated at the time of the scrutiny of nomination papers or by way of election petition. In the Constitution of India and also in the Representation of People Act, 1951, the qualifications and also disqualifications of the candidates have been repeated and have not been given with reference to the qualifications or disqualifications of an elector. The qualifications of a candidate for election to the State Legislative Assembly are contained in Article 173 of the Constitution of India. This Article runs as below:—

"A person shall not be qualified to be chosen to fill a seat in the Legislative of a State unless he—

(a) is a citizen of India;

(b) is in the case of a seat in the Legislative Assembly, not less than 25 years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age: and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

The disqualifications of such a candidate are contained in Article 191(1) of the Constitution of India which runs as below:—

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament".

In both these Articles there is a reference to the citizenship. In Article 173 it is provided that the candidate should be a citizen of India, while in Article 193 it is laid down that a person shall be disqualified if he is not a citizen of India. This statutory qualification or disqualification can, therefore, be reconsidered at the time of the scrutiny of the nomination and can also be reconsidered by the Election Tribunal if this point is raised during the proceedings.

A reference may now be made to section 36 of the Representation of the People Act, 1951, under which the Returning Officer scrutinizes the nominations. The relevant portion of this section runs as below:—

"(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry as he thinks necessary, refuse any nomination on any of the following grounds:—

(a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or.....

(b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or

7. For the purposes of this section—

(a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election.....unless it is proved that the candidate is disqualified under the Constitution or this Act....."

Thus the Returning Officer can examine the nomination papers on an objection raised by a party or on his own motion, to determine if the candidate is not qualified or is disqualified under the Constitution or this Act. But the procedure for such examination shall be as laid down in sub-section 7. In other words, therefore, if there is no evidence to prove that the candidate was disqualified under

the Constitution or this Act, the production of a certified copy of an entry made in the electoral roll of any constituency would be the conclusive evidence of the right of any elector to stand for election.

The learned counsel for the petitioner has laid considerable stress on the words 'conclusive evidence' and has urged that in view of these words the nature of the entry made in the electoral roll cannot be questioned, and the qualifications of the elector necessary under the Constitution or the appropriate Act cannot be reagitated. We are not inclined to be of this opinion. The words 'conclusive evidence' have not been used in section 36(7) of the Representation of the People Act, 1951, in the same sense as the words 'conclusive proof' have been defined in section 4 of the Indian Evidence Act and the words 'conclusive evidence' were interpreted in A.I.R. 1950 Bombay 144 at page 147, Jagat Chandra N. Vohra and another versus The Province of Bombay and others. The definition of 'conclusive proof' as given in the Indian Evidence Act is 'when one fact is declared by this Act to be conclusive proof of another, the Court shall on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it'. Similarly, in A.I.R. 1950 Bombay 144 it was observed that where the, 'evidence is conclusive' "It is not open to any one to lead evidence in any court which would lead to a contrary conclusion". Thus the word "conclusive" is used in the Indian Evidence Act and in A.I.R. 1950 Bombay 144 in the sense that the proof or evidence is final, and no evidence against such a conclusion can be allowed. But the wordings of sub-section 7 of section 36 of the Representation of the People Act, 1951, are quite different. Though the certified copy of an entry made in the electoral roll is conclusive evidence, exceptions are permissible and it is open to the challenger to prove that the candidate was disqualified under the Constitution or the Act. When exceptions are provided in the Act itself, the evidence cannot be conclusive in the sense that it is final, and no evidence to the contrary can be given. It appears to us that the word "conclusive" has been used in the sense as the word "presume" has been used and defined in the Indian Evidence Act. It may further be observed that if an entry in the electoral roll was conclusive in the sense that no evidence against the correctness of the entry could be given, clause (a) of section 36(7) of the Representation of the People Act, 1951, would have been differently worded. We will give an instance by way of illustration. One of the qualifications of an elector is that he should be not less than 21 years in age, while the minimum age for a candidate to the State Assembly is 25 years. Thus if the entry in the electoral roll was conclusive, no party can be allowed to lead evidence to prove that the candidate was less than 25 years in age. In other words, therefore, evidence can be admitted on the inaccuracies in the electoral roll provided that they amount to a disqualification. But a heavy burden would always lie upon the contesting party to prove that the entry is incorrect.

"Disqualification" would not ordinarily include lack of qualification, but in the context of sub-section 7 of section 36 disqualification would also include lack of qualification. We arrive at this conclusion from the fact that the minimum age of a candidate for election to the Legislative Assembly is contained in the qualification clause (Article 173) and not in Article 191 of the Constitution of India which lays down the disqualifications disentitling a person from standing for election to the State Assembly. If a restricted meaning is given to the word "disqualified", the Returning Officer and also the Election Tribunal would not be able to consider if the candidate was aged 25 years or not.

The other provisions of the Constitution of India also make us think that the entries in the electoral roll are not conclusive in the sense that the status of the candidate cannot be challenged at subsequent stages. As indicated above, the words used in Article 173 and 191 of the Constitution are whether the candidate is or is not a citizen of India; while in Article 192 the words used are "has become subject to any of the disqualifications". As different words have been used in these Articles, it can be inferred that the Legislature had in mind that action would be taken under Article 192 only if a person had become subject to any of the disqualifications, while under Articles 173 and 191 if he was from the very beginning a citizen of India or not. In Article 193 also the words used are "if he is not qualified or is disqualified for membership thereof". In a statute the words have to be given the same meaning throughout and not one kind of meaning at one place and quite a different meaning at another. It will, therefore, appear that if a person was not qualified or was disqualified for membership of the State Assembly from the very beginning, he cannot sit or vote as a member of the Legislative Assembly; and if he does sit or vote, he can be ordered to pay a penalty under Article 193 of the Constitution of India. On consideration of the above Articles we are of opinion that nationality or citizenship of a member of the Legislative Assembly can be reconsidered even if no one opposed his election to the State Assembly and no one presented a petition against his election. If

the entries in the electoral roll were final in the sense that the citizenship of the elected member could not be challenged at any subsequent stage, Article 193 would have been differently worded.

As against this view, the learned counsel for the petitioner has invited our attention to Article 190(3) of the Constitution of India which lays down the circumstances in which a seat of a member of a House of the State Legislature would have been deemed to have become vacant; and has urged that Article 193 should be read along with Article 190(3), otherwise there would exist an anomaly that the seat may not be vacant, but at the same time the member of the Assembly would not be able to sit or to vote as a member of such Assembly. The words used in a statute have to be given their ordinary meaning, and, in any case, they are to be given the same meaning throughout. The words 'is not qualified' or 'is disqualified' will, therefore, have to be given their ordinary meaning, that is, the person was not qualified or was disqualified from the very beginning. We are not inclined to attach much weight to the anomaly, referred to above, on another ground also. An anomaly of a similar nature would arise if a person is prohibited to sit or vote as a member of the Legislative Assembly by the provisions of any law made by the Legislature of the State. Article 190(3) (a) provides that if a member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned in clause (1) of Article 191, his seat shall thereupon become vacant. The disqualifications are detailed in Article 191(1) and clause (e) provides that a person would be disqualified if he is so disqualified by or under any law made by the Parliament. In other words, therefore, if a member of the State Legislature is prohibited to sit or vote as a member of the Legislature by the provisions of the law made by the State Legislature, his seat would not be deemed to be vacant but at the same time that person would not be able to sit or vote as a member of the Legislature. We cannot, therefore, give a different interpretation to the Articles of the Constitution on the ground suggested by the learned counsel for the petitioner and it is for the Parliament to amend the Constitution, if necessary, so that the anomaly, if any, may no longer exist.

On consideration of the Constitution of India and the law made by the Parliament relating to the elections, we are of opinion that the lack of statutory qualifications or statutory disqualifications, specially of a personal nature, can be considered both by the Returning Officer and by the Election Tribunal, even if such an objection was not raised at the time of the preparation of the electoral roll. In the present case it was repeated in Articles 173 and 191 of the Constitution of India that the candidate for election to the State Legislature should be a citizen of India. A similar qualification was prescribed for an elector. Thus in view of the repetition of the qualification in Articles 173 and 191, the citizenship of the candidate can be considered at the time of the scrutiny of nomination. The Returning Officer was, therefore, in the right when he gave a finding on whether the petitioner was a citizen of India or not.

During the course of arguments a reference was made to the elections to the State Legislative Assembly held in Rampur State during the year 1948. For the purposes of those elections electoral rolls were prepared, and the residents had an opportunity to file objections against the inclusion of the name of any person in that roll. Certain objections were filed against the inclusion of the name of the petitioner; but these objections were dismissed by Sri Nasir Uddin, the then Civil and Sessions Judge of Rampur. This finding cannot help the petitioner, as that time the Revising Officer did not consider if the petitioner was a citizen of India as laid down in the constitution of India. In fact that Constitution of India had not been framed by that time. He simply considered if the petitioner was a resident of Rampur as laid down in the Election Rules of the State of Rampur. The Election Rules are contained in the Rampur State Gazette (Extraordinary) of the 29th of March, 1948 (Ex. 4). The qualifications of the candidate are contained in Rule 4, and they are that his name should be on the electoral roll, should be able to read and write and should be resident of Rampur State or a proprietor, a representative of the proprietor or a Director of a concern at Rampur. The word 'resident' or 'Bashinda' has been defined in Rule 2(2) and includes persons who reside in any part of Rampur State or have a residential house, maintained as such and in which the person resides now and then. Thus the residential qualifications of the candidate and also of the electors were to be considered and not if he was a citizen of Rampur State. Citizenship is to be given the same meaning as nationality or domicile. Further, the finding of the Revising Officer will not be binding on Revising Officers or Returning Officers at the time of subsequent elections.

The second point urged on behalf of the petitioner was that even if it be presumed that he had migrated to the territory now included in Pakistan after the first day of March, 1947, Article 7 of the Constitution would be inapplicable

as he had not migrated from or returned to the territory of India. It was urged that the term 'territory of India' should be deemed to include only that part of the country which was included in India at the time of the migration or at the time of the return. It was further suggested that Rampur State was a Sovereign State and did not form part of India both in the first week of August, 1947, and also at the time of the petitioner's return to Rampur State in February, 1948. In other words, according to the learned counsel for the petitioner, the term 'territory of India' should be given a wider as well as a narrower meaning—the wider meaning as laid down in Article 1 of the Constitution to most of the Articles and the narrower meaning to Article 7. This is not how a statute should be interpreted. It has been observed in A.I.R. 1948 Patna 435, Panu Nayak and others *versus* Chintal Malik, that the words occurring in a statute ought not to be interpreted as to have both wider and narrower meaning in some or other of the case to which it applies, and that the words have the same meaning uniformly whenever the statute applies. Thus it would be against the cannons of law to interpret the same term in two different manners, specially when the term has been defined in the enactment itself. In Article 1(3) it has been clearly enacted what the territory of India shall be. This clause runs as below:—

"The territory of India shall comprise—

(a) the territories of the States;

(b) the territories specified in Part D of the First Schedule; and

(c) such other territories as may be acquired."

This definition of the term "territory of India' must be substituted wherever it occurs in the Constitution. (A.I.R. 1950 Bombay 144). Thus the territory of India as contemplated in Article 7 would include the territory of the State of Uttar Pradesh in which the old Rampur State is now situated. This view finds support in the other provisions of the Constitution of India. Wherever the term 'India' was to have another meaning, it was clearly indicated what the limits of the territory of that India were to be. In this connection Articles 6 and 8 may be persued. As the territory of India in these Articles was to be different, it was clearly provided therein that for the purposes of these Articles India was to be as defined in the Government of India Act, 1935, as originally enacted. Further, the sections are ordinarily to be interpreted as they stand without the addition of any word. (A.I.R. 1953 Calcutta 18). Nor can the words be given a different meaning simply on the ground that a particular case should not come under the Act. In 1943 A.L.J. 531 at page 534, their Lordships of the Privy Council have observed as below:—

> 'But with all respect to the learned Judges of the High Court the words which they stress and which govern all the clauses in section 2, are not intended to entrust the courts with a discretion, and do not justify them in cutting down the ordinary meaning of the word "debt"..... .....on the ground that they do not think that a particular case should come under the Act. This is a question and a debatable question of policy and not a question of something in the subject or context being repugnant to what is expressly stated to be the meaning of the word".

In other words, therefore, any person who had migrated to Pakistan from any part of the old Rampur State would be deemed to have so migrated from the territory of India. If such a migration was after the first of March, 1947, the person would lose his rights of citizenship of India even though under Article 5 or 6 he may be entitled to be treated or to be declared as a citizen of India. In this view of the law, it appears unnecessary to consider if Rampur was a Sovereign State or if it originally formed part of India.

In this connection it was urged that a great hardship would be caused to the residents if the old Rampur State if Article 7 was rigorously applied to their case as some of them would lose the citizenship as a result of the merger with the Government of India or with the State of Uttar Pradesh. The Courts are not concerned with cases of hardship. It is for the Parliament to legislate and remove their difficulties by passing a law under Article II of the Constitution. However, if the law is capable of two interpretations, the view which is more reasonable and less oppressive is to be preferred. But if only one view of the law can be had, the Courts would not reject that interpretation simply because it appears to be unreasonable or would cause hardship in a few cases. In the present case it cannot also be said that the interpretation of Article 7 is unreasonable or oppressive. After the merger of Rampur State with the Government of India or with the State

of Uttar Pradesh it would be a matter of wrong policy to differentiate between the residents of the old Rampur State and the residents of the remaining part of Uttar Pradesh. The law as applicable to both kinds of residents should be the same and all of them should suffer similar disabilities or should have similar benefits of the law. It would, therefore, have been more unreasonable and oppressive if it were laid down that persons migrating from other parts of India would be subject to the disability contained in Article 7 but not those who had migrated from the old Rampur State. It may further be observed that the alleged disability is not one which cannot be subsequently removed. Under Article II the Parliament has the power to make any provision with respect to acquisition and termination of citizenship and all other matters relating to citizenship. All the persons who are likely to lose the citizenship of India as a result of Article 7 can always move the Parliament which has the power to pass a law with respect to the acquisition of the citizenship of India. But for so long as no law is made by the Parliament under Article II, the persons who lost their right of citizenship cannot be treated as citizens of India.

The next and most important point for consideration is if Aslam Khan, petitioner, had migrated to Pakistan after the 1st March 1947, so as to bring Article 7 of the Constitution of India into operation and disentitle him from being deemed to be a citizen of India. The learned counsel for the petitioner has strongly urged that 'migration' as contemplated by Article 7 is the same thing as 'change of domicile' in the form that it is recognised by the International Law. He also quoted at length from various authorities to show that there was no loss of nationality if a person accepted service in a foreign country but had the intention to return to the country of origin. We shall briefly refer to those authorities at another part of the judgment; but it may here be observed that 'migration' is not necessarily the same thing as 'change of domicile' though in good many cases, or in most of them, it may imply change of domicile. The term 'domicile' has been defined in Dicey's Conflict of Laws, Sixth Edition, at page IXVII, as the 'country which in accordance with the Rules in this Digest is considered by English Law to be a person's permanent home'. Similarly, Rule 1 regarding domicile given at page IXIX is as below:—

> "The domicile of any person is the country which is considered by English Law to be his permanent home.
>
> This is—
>
> (1) in general, the country which is in fact his permanent home;
>
> (2) in some cases, the country which, whether it be in fact his home or not, is determined to be so by a rule of English Law".

Thus for a person to have a domicile in a particular country, it is not absolutely necessary that he must have a permanent home in that country. In rare cases, therefore, there can be change of domicile without migration. We might consider the case of a person employed within India in one of the embassies. If the law of that country permits the change of domicile of a person employed in its embassy without his actually migrating to the country, there would be change of domicile without migration. Similarly, a person can migrate to another country, permanently or for an indefinite period, without the intention to give up his original nationality or the domicile of origin. Such instances are not rare. There are many Indians earning their livelihood in England. If they have the intention to eventually return to India, though they may stay indefinitely in England, they would retain the domicile of origin, *i.e.*, the Indian nationality or citizenship, though they can be deemed to have migrated to England. 'Migration' without change of domicile is now recognised in America as would appear from the International Law, Volume II Second Revised Edition, by Charles Cheney Hyde. The relevant portion quoted at pages 1170 and 1172 is as below:—

> "The Executive Department has long been of opinion that the native American national or citizen who makes his permanent home within the territory of a foreign State may, under certain circumstances, cease to be entitled to the protection of the United States".
>
> "It was declared that an American citizen may now have a permanent foreign residence and yet contribute, indirectly if not directly, to the wealth and strength, the prestige and general welfare of his country, so that as long as he maintains a true allegiance to this Government and is ready, if need be, to come to its defence, he may be entitled to its protection".

There are certain cases quoted in Note 50 at page 125 of Dicey's Conflict of Laws, sixth Edition, where it was held that—

> "Employee with English domicile of origin sent to South Africa on five years' contract of service held not to have lost his English domicile despite intention to settle permanently in South Africa".

'Migration' and 'change of domicile' cannot, therefore, be deemed to be identical terms. We draw this inference from Articles 5 to 7 of the Constitution of India also. In Article 5 the word used is 'domicile' while in Articles 6 and 7 'migration'. If the two words had the same meaning in all the cases, there was no reason for the framers of the Constitution to use a different word in Articles 6 and 7 when the word 'domicile' would have served the purpose. The learned counsel for the petitioner has made an attempt to explain this difference in the terminology by referring to the case of dependents, *viz.*, minors and wife, who are deemed to have the same domicile as of their father or husband. It was mentioned that if the children or wife were to leave India while their father or husband continued to reside within India, the children and wife living abroad would have the domicile of the country of origin, *i.e.*, India, while they would be deemed to have migrated to the new country. It is true that according to the International Law the dependents retain the domicile or nationality of the person on whom they are dependent, unless they abandon that domicile or nationality, or acquire another; but if the Constitution makers had in mind to exclude only such dependents from Indian citizenship, Article 7 would have been differently worded or only a proviso applicable to dependents added to Article 5. On the other hand, what has been done is to specifically consider in Articles 6 and 7 the cases of persons who had migrated from Pakistan to India and *vice versa*. In our opinion, therefore, 'migration' and change of domicile' are not similar terms though in majority of cases 'migration' would imply 'change of domicile'.

Before we discuss the evidence adduced by the parties and the circumstances of the case, a reference may briefly be made to the authorities on the question of domicile brought to our notice. It has been urged that the domicile of origin is harder to displace than a domicile of choice (Conflict of Laws by Graveson, Second Edition, at page 74); that it can never happen that a person may have no domicile or may have domicile in two countries; that service in a foreign country does not necessarily result in change of domicile (International Law, Volume II, Second Revised Edition, by Charles Cheney Hyde, pages 1168 and 1169; Dicey's Conflict of Laws, 6th Edition, pages 86, 122 and 123; Westlake's Private International Law, 7th Edition, pages 362 and 363; Schmitthoff's English Conflict of Laws, Note 2 at page 83; and Private International Law, Second Edition, by Cheshier, page 168); that if a person has a permanent abode in a foreign country but has the intention to return to his country of origin, he would not lose the domicile of origin (International Law, Volume II, Second Revised Edition, by Charley Cheney Hyde, pages 1171 and 1172, Dicey's Conflict of Laws, 6th Edition, page 93; and Oppenheim's International Laws Volume I, Sixth Edition, page 590; and that a heavy burden lies upon the person asserting that the domicile of origin has been abandoned and a domicile of choice acquired (Dicey's Conflict of Laws, Sixth Edition, page 97; Gravanson's cases on Conflict of Laws, pages 78 and 94; and XCVIII Law Times Reports, page 438). The question of burden of proof is of no importance where both the parties have led evidence (See A.I.R. 1949 Calcutta 315 and 194 Indian Cases 270); but if the evidence of both the parties is of a doubtful nature, the case can be decided on the question of the burden of proof. In the present case, both the parties have adduced evidence and consequently unless the evidence on the record is insufficient to enable us to come to any decision, the question of onus becomes immaterial).

If the foreign authorities on the question of change of domicile are read together, it would appear that the domicile of origin or the domicile of choice continues until it is abandoned and there is an intention to abandon the original domicile and to accept the new one. In other words, therefore, even in case of domicile the most important point is the intention and where there is no direct evidence on the intention of the person, all the circumstances will have to be considered to decide if there was the intention to change the domicile.

Similarly, in the case of migration the intention with which and the purpose for which a person migrated to Pakistan would be the determining factor. The term 'migration' has been the subject of decision in a few cases by the High Courts of India. The latest and the leading case on this point is of the Allahabad High Court reported in A.I.R. 1952, Allahabad 257, Shabbir Husain *versus* The State of U.P. and another. Dayal J. observed that 'migration' was going from one

country to another with the intention of shifting one's permanent residence; while Bhargava J. observed that migration from one country to another conveyed the idea of leaving one's country for good to settle in another and also implied change of domicile. Thus 'migration' would mean going from one country to another with the intention of shifting permanently to that country. The Hon'ble Judges commented upon three cases of the other High Courts as below, which had been brought to their notice. As regards A.I.R. 1951 Kutch 38, Jakab Kalak Dana *v.* Kutch Government, cited in A.I.R. 1952 Allahabad at page 262, the observations of Dayal J. are as below:—

> "In the former case the applicants had gone to Pakistan in September, 1948, and were arrested by the police in September, 1950, while coming into Kutch from West Pakistan. They were entering India without a permit. They had gone to Pakistan on acount of famine conditions in Kutch. It was observed by Baxi J. C.;
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> 'Migration within Article 7 has no reference to domicile. It simply means departure from India to Pakistan for the purpose of residence, employment or labour. The applicants themselves admit that they went to Pakistan for a living. They had, therefore, migrated into Pakistan within the meaning of Article 7'.
>
> The case is distinguishable on facts as the applicants in that case had resided in Pakistan for about two years and had gone there for a living in view of famine conditions in the place of the original residence. Even the definiton of migration given in this case does not mean just going to Pakistan on a temporary visit for a particular purpose. According to this definition, one should go to Pakistan for the purpose of residence, employment of labour each of which may imply a sort of permanent or semi-permanent residence for the time being".

and of Bhargava J, at page 268 as follows:—

> "That case also does not support the contention of the learned Government Advocate, as the word 'migration' was taken to mean as 'going from one country to another for the purpose of residence, employment or labour'. In that case it was further admitted that the applicants had gone to Pakistan for a 'living'."

The Hon'ble Judges had, therefore, not disagreed with the view taken in this Kutch case. The other case commented upon was an unreported judgment of the High Court of Bombay in Abbas Shaikh Tyaballi *v.* The State of Bombay, Miscellaneous Application No. 143 of 1950, dated 24th July 1950 in the ordinary civil jurisdiction. The Bombay High Court interpreted the expression 'migrated from the territory of India' as "voluntary departure from the territory of India, the departure not being casual or fortuitous but with the intention of carrying on the normal avocation outside India". Dayal J. differed with this view. The third case was A.I.R. 1951 Nagpur 38, Mohammad *v.* High Commissioner for India in Pakistan. But in it the word 'migration' had not been interpreted, and it was on the basis of the evidence that it was observed that the applicants had migrated to Pakistan and consequently could not be deemed to be the citizens of India.

Another case referred to us is the one reported in A.I.R. 1952 Kutch 91, Bafan Juma *v.* State, which in one way over-ruled the earlier case reported in A.I.R. 1951 Kutch 38. It was observed at page 92 that 'migration' implied change of domicile.

We respectfully agree with the view taken in A.I.R. 1952 Allahabad 257, and hold that 'migration' would imply moving from one country to another in the present case, from the territory of India to the territory now included in Pakistan with the intention of shifting permanently to Pakistan.

Admittedly, Aslam Khan left India and proceeded to Pakistan in the first fortnight of August, 1947. Thus if it is held that he had migrated to Pakistan with the intention indicated above, he would, in view of Article 7 of the Constitution of India, cease to be a citizen of India.

On the point of intention both the parties have led evidence, the petitioner to indicate that he had expressed his intention not only to his friends at Rampur but also to his friends residing at Lahore that he had come to Pakistan temporarily and would eventually return to Rampur, the place to which he belonged; while the contesting respondent, to show that the petitioner was a Muslim Leaguer and had leanings towards Pakistan. We are not satisfied with the quality of evidence

given by the respondent on the political outlook of the petitioner If it is a fact that he had sympathies towards the Muslim League, this fact alone cannot prove that he had shifted to Pakistan with the intention to settle there. It is well-known that after partition of the country many Muslim Leaguers have stayed in India. Similarly, there are many instances of Congress Workers or persons of Leftist groups who have migrated to Pakistan. Thus it cannot be said that a Muslim Leaguer or a person having sympathy with the Muslim League would always migrate to Pakistan.

Much weight cannot also be attached to the oral evidence adduced by the petitioner to prove his intention while going to Pakistan. On this point he has himself made a statement on oath and examined Raghunand Kishore (P.W. 4), Anand Kumar Jain (P.W. 5), Amir Ahmad Khan (P.W. 6), Akhtar Ali Khan (P.W. 8), Agha Khan (P.W. 9) and Ahmad Wali Khan (P.W. 10). Aslam Khan petitioner is an interested party—His oral evidence unless supported by documents or circumstances will have to be viewed with caution. Akhtar Ali is a near relation of the petitioner, and he stands in the same category. Raghunand Kishore admitted that the petitioner did not tell him that he (petitioner) had finally opted for Pakistan. Similarly, the petitioner did not inform Amir Ahmad Khan, who is his intimate friend, that he (petitioner) was opting permanently for Pakistan. The statements of these two witnesses, therefore, indicate that the petitioner had intentionally concealed facts from his intimate friends so that they may not know that he had given his final choice to serve in Pakistan. Anand Kumar Jain says that on being questioned the petitioner had told the witness that he was going to Pakistan temporarily, that his house was at Rampur and his family was living there, and that how he could leave Rampur when it was 'on fire'. The reference to the fire could be either to the political upheaval in Rampur State or to the riots taking place at Rampur in the second week of May, 1947. If by fire the political [illegible] at, there was no reason for the petitioner to leave Rampur as [illegible] on was going on for a long period, long before the petitioner [illegible] If the reference was to the riots at Rampur, it was all the more necessary for the petitioner to stay at Rampur. Further, when the petitioner could conceal facts from his intimate friends like Amir Ahmad Khan (P.W. 5), he could put off other persons including Anand Kumar Jain by giving them explanation of one kind or the other.

Agha Khan and Ahmad Wali Khan (P.Ws. 9 and 10) refer to the expression of intention while the petitioner was staying at Lahore. Agha Khan says that he was told by the petitioner that he was staying there for a short time and would return to Rampur as a Minister of a Popular State. These talks must have taken place in the month of November, 1947, by which time His Highness the Nawab of Rampur had not issued the proclamation for giving democratic government to the people of his State. At that time there could be no question of the petitioner returning to Rampur as a Minister of a Popular Government. Agha Khan was at one time the Military Secretary to His Highness the Nawab of Rampur. He admits that Nawab Sahab had a case under section 420 I.P.C. registered against him. This will show that Agha Khan is not such a respectable person as he asserts himself to be. When cross-examined with regard to this complaint, he originally stated that it was the outcome of the personal grudge which many senior State officials had against him; but subsequently voluntarily stated that his services were indispensable to Nawab Sahab, and as His Highness could not manage his affairs without him, criminal proceedings were launched with a view to put pressure upon the witness to come back to Rampur in the services of Nawab Sahab. This latter explanation is too good to be true. It will, therefore, appear that Agha Khan (P.W. 9) has no hesitation in making a statement which may suit his purpose. Ahmad Wali Khan (P.W. 10) claims to have met the petitioner at Lahore in the month of November, 1947. But he has throughout made uncertain statements with regard to his knowledge of the petitioner. He at one place deposed that as far as he remembered the petitioner came to Rampur in November 1st, 1947, and at another, that the petitioner perhaps lived as a guest of Sri Farid, the Director of Lahore Radio. This would show that either the petitioner is not sure of the evidence or that he is being made to give or that he is pretending to be a disinterested person.

As against this, the respondent examined two political workers of Rampur, Akhtaryar Khan and Unusul Rahman, who were in detention in Rampur State at the time when the petitioner left for Pakistan. Akhtaryar Khan has deposed that in the second week of August, 1947, the petitioner had sent a message to him, while confined in the jail, that he (petitioner) was going to Pakistan, and only God could help him. Similary, Unusul Rahman deposed that the petitioner had sent an oral message that he had been unsuccessful in his struggle and was going to Pakistan. Admittedly, the petitioner could not directly contact these two witnesses while confined in jail. According to them, they were receiving

messages through the jail staff or persons being brought to the jail. The information of the two witnesses was thus hearsay and cannot be relied upon. In case there was any truth in this suggestion, the respondent should have examined the person who had communicated the message to the two witnesses.

From the above it will, therefore, appear that the petitioner had concealed the fact of his finally opting for Pakistan from his friends at Rampur. Such a person could give any kind of explanation in order to conceal his real intention. The evidence of the other witnesses is also not of a convincing nature. In the circumstances we are of opinion that the intention of the petitioner should be judged from his conduct and the circumstances of the case rather than from the oral evidence which has been adduced by the parties, which would usually be of persons interested in them.

Before commenting upon the circumstances favourable to or against the petitioner, it will be proper to refer to two points on which both the parties have adduced evidence. One of them is regarding continued stay of the petitioner's family at Rampur and the other about the return of the petitioner to Rampur in the months of September and October and also in the month of November.

The witnesses who have deposed about the stay of the petitioner's family at Rampur are the petitioner himself and Raghunand Kishore (P.W. 4), Amir Ahmad Khan (P.W. 5), Kalbe Hasan Khan (P.W. 7), Akhtar Ali Khan (P.W. 8), Agha Khan (P.W. 9) and Ahmad Wali Khan (P.W. 10). The last two witnesses have simply stated that they did not see the family members of the petitioner at Lahore. The evidence of these two witnesses has already been commented upon. Kalbe Hasan Khan and Akhtar Ali Khan (P.Ws. 7 and 8) are near relations of the petitioner. Kalbe Hasan Khan is the maternal uncle of Aslam Khan, while Akhtar Ali Khan's mother is the sister-in-law of the petitioner. Amir Ahmad Khan admits to be on intimate terms with the petitioner. Raghunand Kishore's information is based upon what was communicated to him by the petitioner. The witness admits that he did not see the wife and children of the petitioner between August 1947 and February or March 1948. Thus the evidence of Raghunand Kishore cannot be of much help. In other words, the evidence adduced by the petitioner consists of the statements of his friends and relations. As against this, the respondent himself made a statement and examined Salamat Ali Khan (D.W. 3), Abid Mian (D.W. 4) and Akhtaryar Khan (D.W. 6). We are not inclined to place any reliance on the evidence of the respondent as he has deliberately altered his version and made a few incorrect statements. At the time of the examination under Order X C.P.C. he was not able to say when the petitioner's family left for Pakistan and returned to Rampur; but in his evidence he gave the exact months when the family left for Pakistan and returned to Rampur. The explanation given is that he received this information after his examination under Order X C.P.C. In such a case his information being not direct cannot be acted upon. Salamat Ali Khan asserts to have supervised the repairs of the ancestral house of the petitioner at the time of his family returned to Pakistan. The original version of the witness was that he was asked to repair the ancestral house. But when he was questioned if there was any entry in his account-books regarding the repairs of the petitioner's house, he changed his version by saying that he simply supplied labour and supervised the work. The witness claimed to be a friend of the petitioner, but in cross-examination had to admit that he was not on social terms with him (petitioner). Abid Mian claims to be the uncle of the petitioner. Even if such a relationship exists, he is not on good terms with the maternal relations of Aslam Khan petitioner. The witness admits that the wife of Kalbe Hasan, maternal uncle of the petitioner, had filed a pre-emption suit against him (witness). Ahmad Mian was unable to say with whom the children of the petitioner arrived from Pakistan. If he was related to or was on intimate terms with the petitioner, he should have known when the family arrived and with whom. The statement made in the examination-in-chief is of somewhat contradictory nature. He originally stated that the petitioner had taken his family with him when he went to Pakistan, but at another place he deposed that the family left Rampur a week after the riots. Unusul Rahman (D.W. 7) has no direct information. He was simply told by the relations of the petitioner that the petitioner's family had gone to Pakistan.

Aslam Khan petitioner belongs to a family where ladies observe Purdah. Consequently, it will be difficult for outsiders, specially men, to depose on the basis of direct knowledge that the family was or was not at Rampur. Persons who can give evidence on this point can be the relations of the petitioner. At the same time it will have to kept in mind that the relations are likely to make an incorrect statement in order to help their relation. Consequently, their evidence will have to be viewed with caution. It can be accepted only when it is supported by other reliable evidence. In the

present case the petitioner could have filed documentary evidence. His case was that he returned to Rampur in the month of November 1947 on hearing of the ill health of his son. His maternal uncle, Kalbe Hasan Khan further stated that the child was under the treatment of Dr. Shaukat Ullah of Rampur. The Doctor could be the best witness to say if the son of the petitioner was at Rampur or not in the month of November 1947 specially because his evidence could have been judged with reference to the registers maintained by him. If in his registers there was an entry pertaining to the petitioner's son, it would have been proved beyond doubt that the petitioner's family was throughout at Rampur. But if no such entry existed, the petitioner could not be believed as regards the illness of his son. Dr. Shaukat Ullah was cited as a witness but was not examined. Nor did the petitioner apply to the Tribunal for time for the examination of this witness. It can, therefore, be inferred that either Dr. Shaukat Ullah was not inclined to support the petitioner or that he had no documents with him to prove to the satisfaction of the Tribunal that the petitioner's son was ill in the month of November 1947. There was another kind of documentary evidence which the petitioner could produce in the case. It was of the ration card issued for food-grains etc. However, from the letter Ex. 10 it appears that the petitioner was an extraordinary leave without pay from 27th September 1947 to 21st October 1947. This period relates to the first visit of the petitioner to Rampur in the months of September and October 1947. It can, therefore, be believed that the petitioner stayed at Rampur during those two months. If it were so, it is further likely that his family was then staying at Rampur and had not by that time gone to Pakistan.

As regards the second visit to Rampur, there is no evidence except for the oral evidence of the witnesses which has already been commented upon. Dr. Shaukat Ullah was not examined regarding the illness of the petitioner's son; nor was the ration card produced. On the other hand, for reasons which will be given subsequently the letter Ex. 10 disproves the possibility of the petitioner having visited Rampur in November 1947. It is, therefore, not proved that the petitioner had visited Rampur again in the month of November.

We now come to the circumstances from which the intention of the petitioner while going to Pakistan in the month of August 1947 will have to be judged. The petitioner was in the service of the Government of India on the temporary post of Assistant Director, Employment Exchanges, when he was called upon to elect whether he would continue to serve in India or would serve in Pakistan; and if the choice so given was final or provisional. The choice then made by the petitioner is contained in his reply Ex. A7. It is dated 24th June 1947. The petitioner elected to serve in Pakistan and clearly indicated that his choice was final. It was on the basis of this election that he was directed to take over charge at Lahore before the 14th of August 1947; and when he resigned from Pakistan services, he could not get back to his post under the Government of India. This circumstance is against the petitioner and will be discussed in detail subsequently. The other circumstances are that the petitioner finally returned to Rampur in the month of February, 1948, that is, after a stay of about six months; and that he did not take all his properties to Pakistan. It further appears that he had not disposed of his properties Rampur, though he withdrew all the money which he had in deposit in the current account with the Imperial Bank of India at Lucknow. According to the petitioner, his family throughout remained at Rampur, and he did not take any house in Lahore though houses were easily available there; and that he did not adopt Pakistan nationality and did not take oath of allegiance to that Government. The case of the respondent, on the other hand, is that the petitioner's family went to Pakistan a few months after him and returned to India after the petitioner had come back.

The petitioner has tried to explain his choice contained in Ex. A7 by saying that he went to Pakistan as there was a greater scope of promotion and of getting a higher salary. The petitioner calls himself a "careerist'. Probably what he means is that he was an opportunist and wanted to make quick money by serving in Pakistan, where he was likely to be promoted earlier. If it were so, there was no reason for him to make a final choice. An opportunist or a 'careerist', as the petitioner calls himself to be, waits for an opportunity to achieve his purpose. In such a case the petitioner should have made a provisional choice so that if he found the chances of getting a higher salary in Pakistan as remote as in India, he could come back to his own country On the other hand, the petitioner clearly indicated that his choice was final, that is, he would work in Pakistan and would have no lien on the post under the Government of India. The petitioner must have realised that by making a final choice he would not be able to revert to the services under the Government of India; and if he was not lucky in Pakistan he would be without a job when he comes back to India. Further, the choice so exercised will have to be judged in the light of the circumstances then existing.

India was partitioned on territorial basis; but people living in one area did not automatically continue to reside therein and be the citizen of that dominion. There was a general exodus of people, mostly of Hindus from Pakistan to India and of Muslims from India to Pakistan. There were a very large number of people who left Uttar Pradesh and other States to Pakistan to completely settle there as nationals of Pakistan. Government servants working under the Government of India or in the Punjab and Bengal were given the choice either to work in India or in Pakistan. Further, in order that their interests may not be adversely affected they were asked to indicate if their choice was provisional or final. In case of provisional choice, the Government servant could reconsider and give his final choice within six months of the transfer of power. The conditions in the two dominions at the time of the partition were not peaceful. Riots had occurred in Bengal, and communal riots had commenced in the Punjab sometimes from March, 1947. Unfortunately certain communal disturbances had taken place in India also. At Rampur as well riots were taking place on account of persons who wanted Rampur to accede to Pakistan Dominion. Under the circumstances only those persons were moving to Pakistan and were accepting the services in Pakistan who had affection for Pakistan and wanted to settle in that country. As the petitioner had exercised his final choice, it can rightly be inferred that his intention at that time was to settle in Pakistan—may be because he had sympathies towards that Dominion, or it may be, as he says, he was a 'careerist' and had hopes of quick promotion and of getting higher salary in Pakistan.

The circumstances in which the petitioner returned to Rampur also need a reference. In his statement Ex. A1 made before the Returning Officer, he had deposed that he had returned to Rampur and resigned from services in February 1948 when he found the conditions in Pakistan not satisfactory, and that he was intending to return from Pakistan from the very time that he had reached there. Conditions in Pakistan were more disturbed in August 1947, or even upto November 1947, than they were in February 1948. Thus if the petitioner was leaving Pakistan on account of the unsatisfactory conditions existing there, he should have resigned from Pakistan services in September or October 1947, when he first visited Rampur, or in November 1947, when, according to him his son was not well. This version appears to be an afterthought. The subsequent statement does not also appear to be correct. If the petitioner was intending to return from Pakistan from the very time he had reached there, he should have settled down at Rampur earlier and not postponed it till February 1948.

The reason for the petitioner in not returning to Rampur and resigning from Pakistan services earlier is not far to seek. It was on the 8th of January 1948, that His Highness the Nawab of Rampur issued a Farman to give responsible Government to his people and with this aim ordered for election to the Legislative Assembly which was to work as Constituent Assembly of the Rampur State also. Electoral Rules were published in the Rampur State Gazette (Extraordinary) of the 29th March, 1948. Other steps in connection with the elections were also taken. The petitioner who had friends at Rampur could know of the happenings in Rampur State. It appears to us that he changed his mind and decided to return to Rampur so that he be able to stand for election and, if possible, be elected as a Minister. The petitioner did not submit his resignation immediately on his arrival in Rampur State. He was, as indicated previously, on leave from 4th February 1948 to 16th March 1948 and it was on 24th March 1948 that he submitted his resignation from the Pakistan services (*vide* letter Ex. 10). If it was on account of the unsatisfactory conditions in Pakistan that the petitioner returned to India in the month of February, he should have resigned from service before leaving Pakistan. In any case, he should have submitted his resignation immediately on his arrival in India. Instead, the petitioner waited for more than 1½ months. This delay confirms the previous inference that it was on account of the reforms introduced in Rampur State that the petitioner decided to return to Rampur and not because he was throughout intending to return to his home.

The option contained in Ex. A7 and also the circumstances referred to above make us think that the intention of the petitioner while leaving for Pakistan was not only to serve in Pakistan but also to settle down there and that he changed his mind early in February 1948, after His Highness the Nawab of Rampur introduced reforms in his State and the petitioner thought that he would be able to secure a seat in the Legislative Assembly and to hold the post of a Minister. The return to Rampur was thus not connected with the original intention of the petitioner.

As against this, it was strongly urged on behalf of the petitioner that he had gone to Pakistan temporarily and had accepted a temporary post of a short duration which could be cut short by three months' notice on either side. It was thus

suggested that the shifting to Pakistan was for a short period and not with the intention to settle in that country. We are not inclined to be of this opinion. It is true that the post and also the department of Resettlement and Employment, was temporary, but there was no possibility of the staff being retrenched or the term of the department not being extended beyond the term already sanctioned. Thus Government servants working in this Department could not probably think that their job was temporary in the sense that they would be out of employment after two or three years. Further, considering that the services could be terminated at three months' notice on either side, the petitioner should have been all the more careful and should not have opted for Pakistan knowing fully well that if he were to retain Indian nationality the Pakistan Government would regard him a traitor and terminate his services forthwith. This makes us think that the petitioner had no intention other than to settle in Pakistan and to accept Pakistan nationality. The above circumstances also indicate that the petitioner would not have told his friends in Pakistan that he was there temporarily and would eventually return to Rampur.

The fact that the petitioner did not acquire any property in Pakistan and did not take the oath of allegiance to Pakistan Government can be of no help to him. He stayed in Pakistan for only a few months and within such a short period could not have thought of acquiring properties. If the petitioner and his witness, Ahmad Wali Khan, are to be believed, Government servants working in Pakistan had not been called upon to take oath of allegiance before the petitioner left Pakistan in February 1948. There could, therefore, be no question of any one taking oath of allegiance to Pakistan Government. Similarly, even if we believe that the petitoner did not take any house on rent at Lahore but was living in hotel or as a guest with a friend, it will not show that he had no intention to settle in Pakistan. The petitioner had originally gone alone to Pakistan, and it would have been cheaper for him to stay in a hotel than to have a full establishment, which would have been not only expensive but inconvenient also to stay with a friend would have been still cheaper. From the definition of 'domicile' as given in Dicey's Conflict of Laws, it is clear that it is not necessary that a person should have a permanent home in his country of domicile. He can live in a hotel or as a paying guest. Thus the fact that the petitioner did not have a permanent residential house or a home in Pakistan will not make any difference.

The petitioner did not dispose of his movable and immovable properties in India while leaving for Pakistan. But in the circumstances of the present case this fact cannot be of much help to him. The immovable properties which the petitioner possessed were the ancestral houses which he had inherited from his father. His brothers and sisters had also an interest in these houses. One of the brothers at least had not left for Pakistan. Consequently, to dispose of the house property at a short notice would have been difficult, specially when the other co-sharers residing in this very country would not have agreed to sell the houses at a cheap price. The movable properties with the petitioner do did not appear to be of a considerable value. But whatever cash the petitioner had with him he withdrew from the bank. He admits that he had a couple of thousand rupees in his current account with the Imperial Bank of India at Lucknow and that he closed this account before leaving for Pakistan. The petitioner denies having taken this money to Pakistan. His case is that he gave all this money to his wife before leaving for Pakistan. The petitioner's version is uncorroborated; and it appears strange that he withdrew this money before leaving for Pakistan. He could easily have his current account transferred to Rampur, the place where, according to him, he intended to settle permanently, and to draw the money as and when necessity arose. From this conduct it cannot, therefore, be said that the petitioner never had any intention to dispose of his assets in India. In any case, this circumstance cannot be used in his favour.

The respondent had admitted that the petitioner's family did not leave for Pakistan with him. The respondent's version is that the petitioner left for Pakistan in August 1947, while his family followed suit after a few months. The petitioner, on the other hand, says that his family throughout stayed at Rampur and that he himself visited Rampur twice—once in September and October 1947 and the second time in November. The petitioner's assertion regarding the visit to Rampur in September and October 1947 appears to be correct; but not the other assertion. As remarked previously, there is no document to corroborate the assertion that he had come to Rampur in November. The petitioner says that he then stayed at Rampur for 8 or 10 days. He must have taken a few days in journey. Thus his absence from Lahore would have been for more than 12 days. To obtain 12 days casual leave at the end of the year, in the month of November, is somewhat difficult, chiefly because so much casual leave is ordinarily not due at the end of the year. If the petitioner had taken any other kind of leave, it could be none other than extraordinary leave without pay, as the leave sanctioned in the

earlier period from 27th September 1947 to 21st October 1947 was without pay. This circumstance coupled with the fact that Dr. Shaukat Ullah was not examined and the ration card was not produced makes us think that the petitioner's ascertion regarding his second visit to Rampur in November 1947 is not correct. In such a case his son could not be ill at Rampur and his family could not be staying at Rampur in that month. We are, therefore, of opinion that it has not been satisfactorily proved that the family throughout stayed at Rampur, and it is possible that the petitioner's family went out of Rampur, may be to Pakistan in or after October 1947.

The fact that the petitioner left his family at Rampur while leaving for Pakistan in the month of August 1947 cannot go in his favour. As already remarked above, riots had broken out in the country and travel by rail or by road was not safe. At the same time the petitioner could not be definite of finding a house on his arrival at Lahore. He could think that he may have to wait for a few months before he could get a house, just as he had to wait at both the old stations, Allahabad and Lucknow. His wife being in strick purdah could not stay in a hotel or to share lodging with strangers. Consequently the best thing for the petitioner to do was to leave for Pakistan alone and to take the family when he was settled in Pakistan. This is probably what he did.

We have given a careful consideration to the different circumstances and also to the evidence which has been adduced by the parties and are of opinion that Ex. A7 coupled with the circumstances of the case and the conditions existing in two Dominions, before and after the partition of the country, clearly indicates that the petitioner had no other intention except to settle in Pakistan, when he opted for Pakistan services and actually went to Pakistan in the month of August 1947, and that the petitioner changed his mind in the month of February or March 1948 when he found that by returning to Rampur and standing for election to the Rampur Legislative Assembly he was likely to be selected as a Minister, a post which is more responsible and lucrative than of a temporary Government servant with a maximum salary of Rs. 1000. Thus when the petitioner had in mind to settle in Pakistan, he would be deemed to have migrated to that Dominion. As he had so migrated in the first fortnight of August 1947, he would, in view of Article 7 of the Constitution of India, be deemed not to be a citizen of India even though he was born within the territory of India.

The petitioner being not a citizen of India, as laid down in Article 7 of the Constitution of India, was not qualified to stand for election to, and was disqualified from being elected as a member of the State Legislative Assembly. This statutory qualification, and also disqualification, could be taken into consideration by the Returning Officer at the time of scrutiny of nomination papers. Consequently he was in the right in rejecting the nominations of the petitioner on the ground that he was not a citizen of India.

Issue No. 1 is decided against the petitioner.

In view of the above finding, it is not necessary to consider issue No. 2.

The petition has thus no force and is hereby dismissed with costs. We assess the costs, payable to respondent No. 1, as Rs 600/-. The petitioner shall bear his own costs.

D. S. MATHUR, *Chairman.*
J. K. KAPOOR, *Member.*
D. R. MISRA, *Member.*

Bareilly, the 26th February 1953.

[No. 19/168/52-Elec. III.]

P. S. SUBRAMANIAN,
Officer on special duty.

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